

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
COLLINS, :  
 : 11-CV-00766 (FB)  
Plaintiff, :  
 :  
v. :  
 : 225 Cadman Plaza East  
THE CITY OF NEW YORK, et al., : Brooklyn, New York  
 :  
Defendants. : June 12, 2013  
-----X

TRANSCRIPT OF CIVIL CAUSE FOR HEARING  
BEFORE THE HONORABLE ROBERT M. LEVY  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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1 [Proceedings began at 2:20 p.m.]

2 THE COURT: Sorry, the day's gotten away. I've been  
3 on the bench I think since 10. Okay. So we have a lot of  
4 issues here today and it's possible that I may have to weave  
5 you in between other conferences if it takes longer than  
6 thought. But why don't we start with the issue about the  
7 deposition of the Kings County District Attorney.

8 MR. LARKIN: Your Honor --

9 THE COURT: Assume I've read all your papers.

10 MR. LARKIN: Yes, Your Honor.

11 MR. RUDIN: Your Honor, it's our motion.

12 MR. LARKIN: I know, before we do that, Your Honor,  
13 might I just explain? It seems to me that --

14 THE COURT: Oh, I'm sorry. Are all your appearances  
15 -- have we taken your appearances yet?

16 MR. RUDIN: We haven't done them.

17 THE COURT: Okay. So let's start. This is docket  
18 number 11-CV-766, Collins v. The City of New York. Will  
19 counsel please state their appearances for the record?

20 MR. RUDIN: For plaintiff, Joel Rudin, and with me  
21 is Terri Rosenblatt, Steven Aquino, and Jabbar Collins.

22 MR. LARKIN: And good afternoon, Your Honor. For  
23 the City and the individual defendants Gerecitano and  
24 Hernandez, it's Arthur Larkin, L-A-R-K-I-N, New York City Law  
25 Department.

1 MS. KRASNOW: [Inaudible] N-O-W, New York City Law  
2 Department.

3 MR. RUDIN: Good afternoon, Your Honor. Your Honor,  
4 I was just going to make a suggestion and you're obviously the  
5 boss here, so if you don't think it makes sense you'll say no.  
6 But it seems to me that it might make sense to deal with some  
7 of the other issues, including document discovery, first  
8 because when Mr. Hynes should be deposed in part relates to  
9 when we have some of the document discovery that we had  
10 anticipated we'd have by now and which we don't. And some of  
11 the deposition issues in terms of scheduling I think are much  
12 more simple issues and will take much less time.

13 THE COURT: Okay.

14 MR. RUDIN: So that was just a proposal but if you -  
15 -

16 THE COURT: All right. Let's start with the  
17 Vecchione deposition then.

18 MR. RUDIN: Okay. Your Honor, Mr. Larkin indicated  
19 in an email that he attached to his papers last night, this is  
20 his original email to me, that Mr. Vecchione would be on trial  
21 the week of June 10<sup>th</sup> and then we exchanged subsequent emails  
22 and I indicated a willingness to consent to a short  
23 adjournment, but not to July 31<sup>st</sup> which is Mr. Larkin  
24 requested. Mr. Larkin then indicated in his letter of  
25 yesterday that Mr. Vecchione was going to be trying a case,

1 People v. Forester and Boyd, which was the first time we were  
2 provided with any case information about the trial that  
3 supposedly presents a competing consideration.

4           Mr. Aquino from my office went to court this  
5 morning, attended the calendar call on People v. Forester and  
6 Boyd, and the case was adjourned until June 25<sup>th</sup>. Mr.  
7 Vecchione's name was not mentioned. We actually asked defense  
8 counsel if Mr. Vecchione is involved in the case and who was  
9 involved in the case and he was not aware of anyone being  
10 involved in the case besides the ADA, other ADAs. Now, maybe  
11 Mr. Vecchione is going to make a surprise appearance, and  
12 that's his right, but the fact is that the trial's not  
13 starting until at the earliest June 25<sup>th</sup>. So we subpoenaed him  
14 on May 10<sup>th</sup> for June 14<sup>th</sup>. I've indicated to Mr. Larkin as a  
15 courtesy to Mr. Larkin and to Mr. Vecchione that if they need  
16 a short adjournment to prepare, or for whatever reason, I'll  
17 consent to it but I don't see why we cannot finish Mr.  
18 Vecchione's deposition by next week. And it's important in  
19 terms of case development that we have his deposition because  
20 depending upon what his testimony is or whether or not he  
21 acknowledges certain behavior and knowledge or disputes it,  
22 whether he acknowledges the existence of certain customs or  
23 practices or disputes it, that'll determine how many more  
24 depositions we have to take.

25           MR. LARKIN: Your Honor, may I respond briefly?

1 THE COURT: Yes, of course.

2 MR. LARKIN: First of all, Mr. Vecchione is a  
3 supervising prosecutor in the office and I've been advised  
4 that he is intimately involved in that trial. I don't know  
5 whether he's made any court appearances and so I can't state  
6 one way or the other specifically what his role in the case  
7 is. But I have to expect and assume that if I'm advised by my  
8 client, the DA's Office, that Mr. Vecchione needs to be  
9 present and needs to be available to deal with the case, then  
10 I have to assume that that's accurate regardless of whether we  
11 happen to be in court today and regardless of whether Mr.  
12 Rudin says that somebody told him that somebody else told him  
13 that Mr. Vecchione isn't involved in the case.

14 THE COURT: So we'll assume he's unavailable from  
15 the 25<sup>th</sup> on.

16 MR. LARKIN: Yes. I think that's a fair assumption.  
17 And Your Honor, what I wanted to address at the outset, and  
18 forgive me for backtracking just a bit, is the schedule in the  
19 case is somewhat up in the air because we don't have a firm  
20 trial date other than an order from Judge Block indicating  
21 that we could expect a trial date sometime in the fall. We  
22 don't have a firm date and we have, it seems to me, a  
23 substantial amount of discovery to do. And I just think that  
24 to be fair to everyone here, we ought to come up, or try to  
25 come up -- I think the parties in the first instance ought to

1 try to confer and come up with some reasonable schedule to  
2 finish discovery and a reasonable expectation as to when we  
3 can file a motion and expect a trial.

4           You know, we've had some -- in addition to all the  
5 work that needs to be done in discovery, we're getting a  
6 multitude of letters, a barrage of letters. It seems our  
7 office is getting press inquiries every day that something  
8 gets filed by the plaintiff, and that, given the importance of  
9 this case, you know, that's to be expected. But one concern,  
10 official concern we have is the letters that have been filed  
11 are making statements about the case that are simply not true  
12 and there are a substantial number of letters like that with  
13 representations that are getting printed in the papers. And  
14 the concern we have is that the jury pool is going to be  
15 biased and swayed. And this is not an insignificant concern  
16 in this case. And I bring it up because of the amount of time  
17 that we have to invest, that our office has to invest  
18 addressing inquiries from the various news outlets about this  
19 case. You know, it takes up more time. I don't know whether  
20 Your Honor shares that view that there should be some sort of  
21 extension here and perhaps a revised schedule presented to the  
22 district judge, but I put it out there as a significant  
23 potential issue because I think if we could get sort of enough  
24 time to sit down and go through step by step in a systematic  
25 way what's outstanding, what needs to be done, what can we

1 reasonably accomplish in the next say six months, I think we  
2 could make a lot more progress than we are making by filing  
3 letter after letter with the Court raising these issues  
4 piecemeal and taking up more of Your Honor's time than is  
5 necessary. So I'm putting that out there at the outset. I'm  
6 suggesting even perhaps that counsel ought to sit down in the  
7 jury room, I'm willing to do it today, to go through what's  
8 outstanding and what we can reasonably accomplish in say the  
9 next six months.

10 MR. RUDIN: Your Honor, may I respond to that very  
11 briefly?

12 THE COURT: Briefly, yes.

13 MR. RUDIN: First of all, it's hilarious for Mr.  
14 Larkin to --

15 THE COURT: Wait, I'm sorry. I'm going to just see  
16 if we can set some ground rules here. I think we should not  
17 use adjectives in discussing. Let's just stick to the facts  
18 on both sides.

19 MR. RUDIN: Yes, Your Honor. With the CBS show  
20 "Brooklyn DA" underway where Mr. Vecchione is the star in  
21 every show and where justice comes out of his mouth every  
22 other word, for Mr. Larkin to suggest that he's concerned  
23 about influencing the jury pool is just a little bit strange.

24 But the reason that we have put in exhibits in  
25 support of our various motion papers, which we've had to file

1 in this case because we have not been getting discovery, is to  
2 show the Court the support for the illegal policies that we  
3 want to question Mr. Hynes about because we anticipated that  
4 Mr. Larkin would do as he's doing which is to deny them. He  
5 has his role on behalf of his client. The documents we filed  
6 show this Court for the position we've taken and the reason  
7 why we need to depose Mr. Hynes as well as certain other  
8 individuals.

9 In terms of scheduling, when Judge Block issued his  
10 decision in the middle of February, we immediately filed a  
11 document demand on the Monell. We began a series of  
12 conferences with Your Honor. It was agreed that the  
13 depositions of Detective Investigators Maher, Bondor will be  
14 completed by the end of April and ADAs Dennehy and Mandel, the  
15 FOIL ADAs, who are in the Appeals Bureau, and Mr. Larkin  
16 indicated they'd be available so he could just propose dates,  
17 it wouldn't be a problem. We didn't get dates from Mr. Larkin  
18 for any of those depositions. I didn't get a date for Dennehy  
19 and Mandel until last week after we filed our motion. Maher  
20 and Bondor, I ended up having to serve subpoenas for May 22<sup>nd</sup>  
21 and May 23<sup>rd</sup>. Mr. Larkin indicated they were not available on  
22 those dates. We agreed to put one of them over to the week of  
23 June 3<sup>rd</sup>, which was the only week he was going to be available.  
24 I proposed June 5<sup>th</sup>. Mr. Larkin then indicated he was in some  
25 sort of training session or some work related program and



1 wasn't available that week at all. We never got another date.

2           So then we filed our motion on May 28<sup>th</sup>, and then Mr.  
3 Larkin about a week later sent me an email which he attached  
4 to his papers indicating that that ADA would be -- I think it  
5 was that detective investigator, would be available no earlier  
6 than July 30<sup>th</sup>, and we still haven't gotten a date for the  
7 other one.

8           So as I said before, it's important for the progress  
9 of this case that we get the depositions done of the fact  
10 witnesses who have knowledge about the Jabbar Collins case,  
11 and Maher and Bondor would certainly have knowledge about the  
12 programs that Mr. Larkin and District Attorney Hynes have been  
13 denying existed like the hotel custody program, the jail, the  
14 private jail program, the illegal practice of bringing  
15 material witnesses all the time to the DA's Office rather than  
16 to court, the practice which Mr. Vecchione's paralegal  
17 acknowledged --

18           THE COURT: I'm familiar with everything that's been  
19 in your papers.

20           MR. RUDIN: All right. So we need to get these  
21 depositions done. Until we get these depositions done, we  
22 don't know fully the scope of the Monell discovery that has to  
23 be done because as I said before, if we can establish -- if we  
24 can get acknowledgments of the existence of certain customs or  
25 practices, then we don't need to put on evidence from other

1 ADAs and other knowledgeable sources about the customs or  
2 practices. For example, there's an ADA --

3 THE COURT: Yes, I think I know where you're going.  
4 But it seems to me that the principal then is that if we stage  
5 the depositions properly and we make them court ordered dates  
6 that both sides can agree to then the discovery will actually,  
7 may move more smoothly.

8 MR. RUDIN: Yes, Your Honor.

9 THE COURT: And I think both sides could agree with  
10 that, right?

11 MR. RUDIN: Yes, Your Honor.

12 THE COURT: Okay. So why don't we make that our  
13 first priority then?

14 MR. RUDIN: Exactly.

15 THE COURT: Okay. So let's figure out how we can do  
16 that now.

17 MR. RUDIN: Your Honor, I would propose that we do  
18 Detective Investigators Maher, Bondor, the two FOIL ADAs  
19 Dennehy and Mandel --

20 THE COURT: Okay. Slow down. Maher, Bondor,  
21 Dennehy and Mandel.

22 MR. RUDIN: Mr. Vecchione and Ms. Wrenn, ADA Wrenn,  
23 the one that --

24 THE COURT: Right.

25 MR. RUDIN: -- was supposed to go the other week, by

1 the end of June. And Mr. Larkin indicates that Mr. Vecchione  
2 will be involved in the trial of that case that begins June  
3 25<sup>th</sup>, we have two weeks to take his deposition before June 25<sup>th</sup>.

4 THE COURT: Is that the order of the depositions?

5 MR. RUDIN: No, as to those --

6 THE COURT: Doesn't matter.

7 MR. RUDIN: -- six depositions, the order is not  
8 that important, Judge. It's at Mr. Larkin and his clients'  
9 convenience as long as they get done. And considering that  
10 we've been trying to schedule these depositions since March, I  
11 think that's ample time.

12 MR. LARKIN: Your Honor, I just -- forgive me, Your  
13 Honor, I'm sorry. There's one thing I do want to respond to  
14 that Mr. Rudin said and I'll move right into this deposition  
15 scheduling question. Mr. Rudin again mentioned the private  
16 prison system. It's fascinating he's the only person who  
17 seems to know about it. For 23 years apparently, according to  
18 Mr. Rudin --

19 THE COURT: Okay, really I --

20 MR. LARKIN: -- the District Attorney of Kings  
21 County has been running a private jail system.

22 THE COURT: Okay.

23 MR. LARKIN: He's the only one who knows about it.

24 THE COURT: Mr. Larkin --

25 MR. LARKIN: Blew the lid right off the story.

1 THE COURT: -- Mr. Larkin --

2 MR. LARKIN: I'm sorry, Judge. I just -- it's  
3 comical.

4 THE COURT: I understand everybody feels strongly  
5 about this and you can discuss all these issues, you know,  
6 outside but at this point I'm just interested in scheduling  
7 and the disputes that you have.

8 MR. LARKIN: I understand. I'm sorry, Your Honor.  
9 With regards to the two detective investigators, these are  
10 retired employees and we have offered dates. In fact, I  
11 offered dates I believe -- I know we've offered dates in the  
12 past and for one reason or another the depositions didn't  
13 happen on the dates that we had originally offered up. I  
14 believe we have currently a date for Mr. Maher and we're  
15 awaiting confirmation for which date plaintiff wants to take  
16 the deposition. Mr. Bondor --

17 THE COURT: I'm sorry, so give me the date for Maher  
18 that you have right now.

19 MR. LARKIN: Bear with me one moment, Your Honor.

20 MR. RUDIN: Your Honor, they are under subpoena.  
21 They were subpoenaed for May 22<sup>nd</sup> and 23<sup>rd</sup> and --

22 THE COURT: I know. We're just looking for a date  
23 right now.

24 MR. RUDIN: I understand.

25 MR. LARKIN: Your Honor, the dates that we have, I

1 have, are July 30<sup>th</sup> and 31<sup>st</sup> or August 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, or 8<sup>th</sup>.

2 THE COURT: All right. Can we do them sooner?

3 We're looking to do them in June and July.

4 MR. LARKIN: This is the availability that I have  
5 fore them. If you want to say July 30<sup>th</sup> --

6 THE COURT: That's too late. We shouldn't have to  
7 wait 60 days to depose all these witnesses. If we can come up  
8 with a rational schedule --

9 MR. RUDIN: Your Honor, we served those notices in  
10 April. So I understand the Court is trying to bend over  
11 backwards to accommodate everybody but it really isn't fair to  
12 us when we're trying to develop our case to have the  
13 defendants adjourn the deposition, not supply a date, wait  
14 until now, and then claim that the witness is not available to  
15 the end of July. It's just not right. They should be able to  
16 do it in June.

17 MR. LARKIN: Please spare me. These are retired --  
18 I'm sorry, Your Honor, to interrupt but these are --

19 THE COURT: Let's not talk about who they are and  
20 let's just get the date. Okay. I would like to see as many  
21 depositions in June as possible, June and July.

22 MR. LARKIN: What I will do then --

23 THE COURT: Where's Mr. Maher right now?

24 MR. LARKIN: I'm sorry, Your Honor, he's -- I have  
25 not spoken directly with him. He's a former employee with the

1 DA's Office and our contacts at the DA's Office have spoken  
2 with him. I will -- when we -- I can even do this on a break  
3 if the Court would like. I will call, find out either direct  
4 contact information for him so we can speak with him directly,  
5 or in the alternative, have our contacts at the DA's Office  
6 reach out to him and find out his availability in the next 30  
7 days. I'm happy to do that, Your Honor.

8 THE COURT: Good. Thank you.

9 MR. LARKIN: The other DI is Mr. Bondor. Now, we  
10 understand he's retired and he travels a lot. He is, well  
11 he's traveling to the end of June my co-counsel, Ms. Krasnow,  
12 has just informed me. So I don't believe we're going to be  
13 able to get in touch with him until the end of June. But when  
14 he's back, we can certainly reach out to him that first week  
15 in July and supply dates at the earliest opportunity. And I  
16 believe this is the witness for whom we did have dates and for  
17 one reason or another we supplied the dates and the  
18 depositions didn't happen on the days that we offered them up,  
19 offered him up.

20 MR. RUDIN: They were not --

21 MR. LARKIN: So we will certainly, that first week  
22 in July, Your Honor, reach out to him and find out his  
23 schedule.

24 THE COURT: All right. What I'm going to ask is  
25 that if someone could contact him by mail or email or however

1 he's contactable, and get dates for as soon as possible after  
2 his return.

3 MS. KRASNOW: Your Honor, I've been in contact with  
4 him and he is traveling through the end of June, but I can be  
5 in touch with him before he gets back.

6 THE COURT: Great.

7 MS. KRASNOW: So I can try to get a date as soon as  
8 he gets back in early July. And if he's back in town for a  
9 part of June, I could also try to work that as well, but I  
10 don't want to guarantee that because I'm not 100% sure.

11 THE COURT: All right. That sounds reasonable.

12 MR. RUDIN: And Mr. Vecchione?

13 MR. LARKIN: Your Honor, with regards to Ms. Mandel  
14 and Morgan Dennehy, depositions that probably could be  
15 conducted in half a day, at least according to the last  
16 representation that Mr. Rudin made. I'm not sure what he's  
17 going to say today. I offered up dates for them next week.  
18 Ms. Mandel Monday or Tuesday, Mr. Dennehy Monday the 17<sup>th</sup> or  
19 July 1<sup>st</sup>, 8<sup>th</sup>, 10<sup>th</sup>, or the 18<sup>th</sup>, or the 22<sup>nd</sup> and I haven't gotten  
20 a response. And that was an email I sent last week. So those  
21 depositions -- we could have had dates by now if Mr. --

22 THE COURT: Okay. Let's get to them now.

23 MR. LARKIN: Absolutely. It's up to plaintiff.  
24 What dates does he want?

25 MR. RUDIN: You said the 19<sup>th</sup>?

1 MR. LARKIN: No, I didn't say the 19<sup>th</sup>.

2 MR. RUDIN: I'm sorry, you said the 17<sup>th</sup>?

3 MR. LARKIN: Why don't you take a look at the email  
4 I sent you.

5 THE COURT: I think the 17<sup>th</sup> and 18<sup>th</sup> is what I heard.

6 MR. LARKIN: The 17<sup>th</sup> or the 18<sup>th</sup> would have worked  
7 for Ms. Mandel as of last Tuesday. For Mr. Dennehy we've got  
8 June 17<sup>th</sup> or July 1<sup>st</sup>, 8<sup>th</sup>, July 10<sup>th</sup>, July 18<sup>th</sup>, or July 22<sup>nd</sup>. At  
9 this point I might suggest that we pick a July date for Mr.  
10 Dennehy and I can get some other dates for Ms. Mandel because  
11 we're going to have to have some time to meet and to prepare  
12 her. And at this point, given the fact we've got only two  
13 business days left this week, it might make more sense to have  
14 some alternate dates.

15 MR. RUDIN: The 17<sup>th</sup> is fine. If that's too little  
16 time, then I'm sure we can work out another date as long as we  
17 understand that it will be done by July 1<sup>st</sup> you said.

18 THE COURT: No, let's work out the other date now.

19 MR. RUDIN: Okay. Well, I'm available June 17<sup>th</sup>.  
20 Can Mr. Larkin tell me other dates in June?

21 MR. LARKIN: Well, if you had told us last -- if  
22 counsel had told us last week, Your Honor, we could have  
23 produced her on Monday but now it's already the 12<sup>th</sup> and we've  
24 got, as I just said, two business days left in this week. And  
25 so to meet with her and prepare is going to be tight. We've



1 got some authority to actually hire another attorney to assist  
2 us on this case given the burdens of discovery, and we're  
3 going to be conducting interviews this Friday. So you know,  
4 we blocked out a chunk of time on Friday for that. I was not  
5 planning to be in tomorrow. So I mean it's just -- it would  
6 make more sense if we nail down a date for Mr. Dennehy in  
7 July, the 1<sup>st</sup>, the 8<sup>th</sup>, the 10<sup>th</sup>, the 18<sup>th</sup> or the 22<sup>nd</sup> and we  
8 could then pick a date for Ms. Mandel hopefully the same day  
9 if it works, if it would work.

10 MR. RUDIN: July 1<sup>st</sup> is fine.

11 THE COURT: For Dennehy and Mandel?

12 MR. LARKIN: It should work -- I know it's going to  
13 work for Mr. Dennehy. I was informed he's available that day.

14 THE COURT: Okay.

15 MR. LARKIN: I will inquire as to Ms. Mandel, Your  
16 Honor.

17 THE COURT: Good.

18 MR. LARKIN: And if that date does not work, we'll  
19 pick a date in that time frame.

20 THE COURT: Vecchione?

21 MR. LARKIN: Well, the trial is starting on the 25<sup>th</sup>,  
22 Your Honor. We did offer up July 30<sup>th</sup> and 31<sup>st</sup> and August 5<sup>th</sup>,  
23 6<sup>th</sup>, and 7<sup>th</sup>. And the reason, Your Honor, one of the reasons  
24 for pushing the date out for his deposition is he's a key  
25 witness in the case. He's going to be questioned about not

1 only the Collins prosecution but others, as the Court knows,  
2 which took place 20 years ago, 15 or 20 years ago. And it  
3 just seems that he's going to need -- we're going to need some  
4 time to prepare him and he's going to need some time to  
5 refresh his memory about the events about which he's going to  
6 be questioned in this case. And so I appreciate and  
7 understand that there's a need to set discovery dates  
8 particularly with regards to these depositions, but I would  
9 ask the Court's indulgence to give us some time, reasonable  
10 time, to prepare Mr. Vecchione and let him prepare. And July  
11 30<sup>th</sup> and 31<sup>st</sup> both work. That's a Tuesday and a Wednesday.  
12 There's three days the following week that also would work.

13 MR. RUDIN: Your Honor, he was subpoenaed on May  
14 10<sup>th</sup>. The complaint makes very clear what the other cases are  
15 where we believe that there were allegations or reality of  
16 misconduct. I'm happy to let Mr. Larkin know shortly about  
17 any, within a few days, about any of the cases we wish to  
18 question Mr. Vecchione about in addition to the Collins case  
19 so that he knows what has to be prepared. But 90% of the  
20 deposition is going to be about the Collins case and about the  
21 practices that went on in the Collins case. The idea that he  
22 can't be prepared in the next -- give a deposition sometime in  
23 the next two weeks just is not -- I don't think is candid.

24 MR. LARKIN: Well, with respect, counsel, he's in  
25 the midst of trying a --

1 MR. RUDIN: He's in the midst of a TV program.

2 THE COURT: Gentlemen, please.

3 MR. LARKIN: I'm sorry, Your Honor.

4 THE COURT: All right. So I think I understand both  
5 of your concerns. We don't have any other depositions before  
6 the end of June though, do we at this point? Have we  
7 scheduled anybody?

8 MR. LARKIN: We're taking -- Your Honor, we do. We  
9 have Jabbar Collins' deposition set for June 20<sup>th</sup> which the  
10 plaintiff wants to move to the late July, July 23<sup>rd</sup> and 24<sup>th</sup>  
11 which I said I was perfectly willing to do in order to  
12 accommodate the concern that Mr. Collins not appear twice and  
13 be deposed twice because he has two lawsuits pending in  
14 addition to this case, and he has a case in the Court of  
15 Claims. And we noticed Mr. Collins' deposition for June 20<sup>th</sup>.  
16 Plaintiff indicates he wants to move that to July 23<sup>rd</sup> or 24<sup>th</sup>  
17 and we are amenable to doing that so that he doesn't have to  
18 appear twice for both cases. So the suggestion that July 30<sup>th</sup>  
19 is too late for ADA Vecchione's deposition doesn't seem to  
20 make much sense. I mean if Mr. Vecchione has to appear in the  
21 next two weeks, it seems to me we ought to stick to Mr.  
22 Collins' deposition dated June 20<sup>th</sup>.

23 MR. RUDIN: Your Honor, that's just an astonishing  
24 statement.

25 THE COURT: Okay. Well --

1 MR. RUDIN: It's just so untrue because we had an  
2 agreement, Your Honor, the entire discovery process. Your  
3 Honor will remember for two years we've had an understanding -  
4 -

5 THE COURT: Right.

6 MR. RUDIN: -- that depositions will be done  
7 jointly. So Mr. Larkin sent me an email when he wanted to  
8 schedule Mr. Collins' deposition that he insists on doing it  
9 only for this case. He doesn't want the State Attorney  
10 General involved. We then had further conversation because I  
11 pointed out that what's good for the goose is good for the  
12 gander, so we'll do Mr. Vecchione on two days, two separate  
13 days. So then Mr. Larkin agreed to discuss trying to do Mr.  
14 Collins in a more sensible way. And the problem was that the  
15 State Attorney General indicated that she is not available  
16 until July 15<sup>th</sup>.

17 So then Mr. Larkin suggested July 23<sup>rd</sup> and 24<sup>th</sup> and  
18 was pressing me to agree on those dates, and I indicated back  
19 that I thought it would be presumptuous to agree on any dates  
20 well into July until we understood what Your Honor's  
21 parameters were for discovery and for the dates when discovery  
22 should be completed. I think it makes sense to do Mr. Collins  
23 together with the state and the city cases. If it takes more  
24 than a day, we'll agree to have it take more than a day. I  
25 don't think it need be July 23<sup>rd</sup> and 24<sup>th</sup>. I prefer that it be

1 sooner.

2 MR. LARKIN: It has to be July 23<sup>rd</sup> and 24<sup>th</sup> because  
3 the State Attorney General is not available then.

4 THE COURT: Yes. I understand. Okay.

5 MR. LARKIN: And that's the reason why I agreed to  
6 adjourn the deposition.

7 THE COURT: Right. All right. Gentlemen, Mr.  
8 Larkin, okay.

9 MR. LARKIN: I guess I'm --

10 THE COURT: I understand this is a high pressure  
11 case and there's a lot going on in this case. Here's how  
12 we're going to conduct this conference. We're not going to  
13 spend five minutes over every single deposition. I think  
14 maybe the best way to do it is we're going to come up with an  
15 end date when all the depositions will be completed and then  
16 we're going to figure out how to do it and we'll work  
17 backwards from that end date so that you won't have to worry  
18 that each single deposition that's being scheduled is somehow  
19 going to push back the end date. That's all we really care  
20 about is when the end date is.

21 MR. LARKIN: Yes, Your Honor.

22 THE COURT: All right. So that's why I wanted to  
23 start with the Hynes deposition and the other depositions  
24 because I think there are going to be questions about which is  
25 going to be first and which is going to be second. Why don't

1 we just pick a date right now that's going to be the end date  
2 for all these depositions so then you can work comfortably  
3 with in that parameter and you don't have to worry about me  
4 forcing you to depose people on days you don't want.

5 MR. LARKIN: I appreciate it. Your Honor, could I  
6 suggest September 30<sup>th</sup> as an end date for the depositions and  
7 for the fact discovery phase of the case? I think that is  
8 fair and reasonable and I think it gives everybody enough  
9 time, it gives all of us enough time to deal with the number  
10 of privilege issues that may come up because we haven't talked  
11 about that yet. And it gives us time to deal with the likely  
12 depositions of other witnesses before DA Hynes is deposed. Of  
13 course, that depends on what Your Honor's view is of that  
14 issue, and we've raised that issue. I think it just gives --  
15 it's enough time so that we can comfortably and fairly, it  
16 seems to me, deal with the complexities of the case and the  
17 sheer number of documents and the number of witnesses that we  
18 need to depose here.

19 MR. RUDIN: I mean that's why we haven't had any  
20 meet and confers on emails. That's why I've had to file all  
21 these motions and gotten no progress with discovery until I  
22 file motions. The whole point here has been to push this case  
23 back as far as possible. I think that's completely  
24 unreasonable. There's no reason we have to go to September  
25 30<sup>th</sup>. Judge Block indicated initially that he wanted --

1 THE COURT: What's your proposal?

2 MR. RUDIN: August 15.

3 MR. LARKIN: Your Honor, August 15<sup>th</sup>? I just don't  
4 think that's realistic. I think a September 30<sup>th</sup> cutoff is  
5 much more reasonable in light of all the circumstances here.  
6 You've got additional witnesses to depose, a significant  
7 number of witnesses. We've got document issues that remain  
8 unresolved. We have all these emails, searches for emails  
9 that the plaintiff wants us to conduct which if the Court  
10 directs us to do it, we're going to have to have some time to  
11 do those searches as well as allocate the cost because over  
12 time it's going to be an issue with regards to those  
13 documents.

14 MR. RUDIN: Why hasn't that started?

15 MR. LARKIN: We've got -- may I? I'm sorry. I  
16 apologize. You know, September 30<sup>th</sup>, for a case like this to  
17 have discovery be conducted between say -- Judge Block's order  
18 I believe was in February so a discovery period from March to  
19 September was about six months, six to seven months. On most  
20 1983 cases, six to seven months would be a pretty fast  
21 discovery track. And in this case, the issues are, it seems  
22 to me, much more complicated. They involve many more  
23 documents. To have a discovery period from say March 1  
24 through September 30 would be fast. But I think in the  
25 circumstances given where we are, September 30 is just not an

1 unreasonable cutoff date. I mean Your Honor knows from all  
2 the 1983 cases that are in this courthouse six to seven months  
3 for discovery is atypical. It's very, very short even for a  
4 garden variety case involving one plaintiff and a few  
5 defendant police officers. Here you've got -- we've got  
6 litigation going back to the --

7 THE COURT: I understand.

8 MR. LARKIN: -- 1970s and 1980s. I'm sorry.

9 MR. RUDIN: Your Honor, discovery began in 2011.

10 THE COURT: My question was how long it would --  
11 when shall we complete all of the depositions and not really  
12 when all fact discovery will be completed. I think that may  
13 be a slightly different issue and there may be more follow up  
14 and whatever. I think a time in August would make sense. I  
15 think the end of August.

16 MR. LARKIN: Thank you, Your Honor.

17 THE COURT: Now, because lawyers do deserve to have  
18 a life, I'm going to make it August 27<sup>th</sup>. All right. Now,  
19 should I just let both of you, or many of you, just come up  
20 with the dates or do we need to set those dates right now and  
21 that's --

22 MR. RUDIN: I think we need to set a date for Mr.  
23 Vecchione because I'm not going to agree to go beyond June  
24 25<sup>th</sup>.

25 MR. LARKIN: Well, that doesn't make sense. Your



1 Honor, if I can just offer up a suggestion. I think that  
2 given the fact that we have a firm end date, I think that we  
3 can work to get the dates. And the reason I suggested that is  
4 that we're at a slight disadvantage today because we need to  
5 confer with our witnesses and figure out firm dates for their  
6 availability, and we've done that in part but I guess because  
7 plaintiff was too busy to get back to us last week we lost a  
8 few dates for next week. And now that we've got the firm  
9 cutoff date, we will be able to speak with our client, get the  
10 dates we need, clients and witnesses, get the dates we need.  
11 And I think it just makes more sense to do that in a  
12 reasonable way rather than be hamstrung with court ordered  
13 dates that I may not be able to confirm today because we need  
14 to speak to our witnesses.

15 Most of our discovery is non-party discovery except  
16 for Mr. Collins. He's the only party we need to depose. The  
17 other witnesses are all our witnesses, and so it's our burden  
18 to produce them. And we're going to need to speak with them  
19 to really get a sense of their schedules.

20 THE COURT: But we're only talking about Mr.  
21 Vecchione at this point, and the question really is why can't  
22 he appear on the 21<sup>st</sup> and the 24<sup>th</sup> for deposition? That would  
23 be, you know, close to 13 days to --

24 MR. LARKIN: June 21<sup>st</sup>?

25 THE COURT: June 21<sup>st</sup>. Nine days to prepare, and

1 then the 24<sup>th</sup>, and that would allow him to have his trial on  
2 the 25<sup>th</sup>.

3 MR. LARKIN: Well, he would only be deposed for one  
4 day, seven hours. I mean --

5 THE COURT: One day of seven hours. Okay. So the  
6 24<sup>th</sup> then?

7 MR. LARKIN: Right. Yeah, the -- I think it's the  
8 24<sup>th</sup> or 25<sup>th</sup> we have Mr. Collins' defense counsel, Michael  
9 Harrison, we're taking his deposition.

10 THE COURT: Okay. So the 25<sup>th</sup> is out --

11 MR. LARKIN: The 25<sup>th</sup> --

12 THE COURT: -- because that's the first day of the  
13 trial.

14 MR. LARKIN: The 25<sup>th</sup> would not work. The 24<sup>th</sup> is the  
15 day before the trial. He has to --

16 THE COURT: Then we can do it the 21<sup>st</sup>.

17 MR. LARKIN: I've got to assume that he's occupied  
18 that day and the same for the 21<sup>st</sup>. If the Court is going to  
19 allow us an August 27<sup>th</sup> date to complete depositions, which I  
20 think is still very tight, it seems to me -- and if the Court  
21 is going to permit Mr. Collins' deposition to be moved to  
22 July, an arrangement that we do not object to in the  
23 circumstances, then July 30<sup>th</sup> is not an unreasonable date for  
24 Mr. Vecchione given his other obligations, his other  
25 professional obligations.

1           MR. RUDIN: He's the lynchpin of our discovery. We  
2 have to take him soon, otherwise it just disrupts the  
3 preparation of our case and figuring out who else has to be  
4 deposed. And I can only say again that we subpoenaed him on  
5 May 10<sup>th</sup>. This is not a surprise. He's not even counsel of  
6 record in this case. He's apparently intending to become  
7 involved but he has other lawyers who've been developing the  
8 case and handling it up until now. And he's a highly  
9 experienced prosecutor. He's tried dozens and dozens of  
10 complex and serious cases. And the idea that he cannot put  
11 aside one day before June 25<sup>th</sup> to give a deposition just  
12 doesn't make sense.

13           THE COURT: When is the trial scheduled? And do you  
14 know if it's going to be over mid to late July?

15           MR. LARKIN: I'm told mid to late July, yes, Your  
16 Honor, mid July, a couple of weeks for that trial. So, you  
17 know, if we're not going to depose Mr. Collins until the 23<sup>rd</sup>,  
18 it seems to me that deposing Mr. Vecchione on the 30<sup>th</sup> or the  
19 31<sup>st</sup> is not a heavy burden.

20           THE COURT: I think it's apples and oranges though  
21 because I think what --

22           MR. LARKIN: I think -- I'm sorry.

23           THE COURT: -- counsel is saying is that it's  
24 necessary to have Mr. Vecchione's deposition before some of  
25 the others are taken. It'll also help to narrow discovery or

1 broaden discovery. And I think we need it sooner rather than  
2 later.

3 MR. LARKIN: Your Honor, I --

4 THE COURT: Nothing I can do about his trial, but I  
5 do think that we need to get his deposition earlier --

6 MR. LARKIN: Your Honor --

7 THE COURT: -- otherwise these schedules won't work.

8 MR. RUDIN: And Your Honor --

9 MR. LARKIN: It's not -- I mean there's been a  
10 statement or various statements made that Mr. Vecchione's  
11 deposition is necessary before others are taken but you know,  
12 counsel said the same things about DA Hynes' deposition. I  
13 don't necessarily see the logic of that at all. He is a key  
14 witness in the case. There's no question about that. But his  
15 testimony is going to be what it is. It's not going to --  
16 other discovery it seems to me is not going to depend on what  
17 ADA Vecchione says happened in the Collins case. There's  
18 already an extensive record about what has happened, what  
19 representations were made, you know, threats that were made to  
20 ADA -- excuse me, to one of the witness's families by Mr.  
21 Collins or by people working with him, the requests that those  
22 family members made for protection. You know, there's already  
23 an extensive record there. I don't see how that other  
24 discovery will depend on that deposition even though that  
25 representation has been made. Perhaps there can be some

1 discussion here about the specifics and about other ways we  
2 can address whatever counsel's concerns are instead of  
3 insisting upon a court ordered date for a senior prosecutor  
4 who's involved in a major trial. That's my only concern.

5 And there's been a complete absence of conferral in  
6 this whole situation, and you know, I suggested yesterday that  
7 counsel and I would at least talk about the schedule before we  
8 came in today, and I didn't get any phone calls. So --

9 THE COURT: Wait, let me just ask --

10 MR. LARKIN: -- and I understand he was busy --

11 THE COURT: --Mr. Rudin a question here.

12 MR. LARKIN: I'm sorry.

13 THE COURT: Mr. Rudin, is it the deposition as to  
14 the Collins case or is it as to the Monell issues that is most  
15 critical for you at this point that it be done before the  
16 other depositions?

17 MR. RUDIN: It's both because --

18 THE COURT: But you only have one.

19 MR. RUDIN: The Collins case. I mean --

20 THE COURT: Okay. So why don't we -- one thing we  
21 can do we can shorten your preparation time if he only has to  
22 focus on the Collins case for this particular deposition. He  
23 will be deposed on the 21<sup>st</sup> about the Collins and then as to  
24 the other Monell issues, he can be deposed later.

25 MR. RUDIN: The only thing I would ask Your Honor is

1 that certain of the practices that we allege happened in the  
2 Collins case such as the manner in which witnesses were  
3 subpoenaed or held pursuant to material witness orders we  
4 would like to ask him, after we ask him about what happened in  
5 the Collins case and his knowledge, we would like to ask him  
6 whether or not -- about his knowledge of customs or practices  
7 in the office with regard to those issues. It seems to me --  
8 because that --

9 THE COURT: You can ask in the office but not about  
10 specific cases.

11 MR. RUDIN: That's fine.

12 THE COURT: You can ask about that.

13 MR. RUDIN: And Your Honor --

14 THE COURT: If the point is that he needs time to  
15 prepare and he's going to have to prepare on other cases that  
16 he's not familiar with and hasn't seen for 20 years, I'll  
17 defer that part of the deposition and he will be deposed on  
18 the Collins case on the 21<sup>st</sup>.

19 MR. RUDIN: Only on practices in the office.

20 MR. LARKIN: Your Honor, may I just ask one  
21 question? Could I please speak to ADA Vecchione? And perhaps  
22 there's another date --

23 THE COURT: Sure.

24 MR. LARKIN: -- between now and the --

25 THE COURT: Absolutely.

1 MR. LARKIN: Whatever date is best for him.

2 THE COURT: Of course.

3 MR. LARKIN: I would just ask for that opportunity.  
4 Thank you, Your Honor.

5 THE COURT: Well, now that we finished the easy  
6 issues --

7 MR. RUDIN: We need one for ADA Wrenn.

8 THE COURT: I know. Well, you can do that in July  
9 sometime, can't you? Or in June? Whatever is --

10 MR. LARKIN: May I confer with my co-counsel about  
11 one issue? Forgive me. I apologize. I'm sorry.

12 [Pause in proceedings.]

13 MR. LARKIN: I'm sorry, Your Honor. Go ahead. I  
14 apologize.

15 THE COURT: Okay. I'm not sure that you need a  
16 court ordered date on that. If you want one, we can come up  
17 with one right now.

18 MR. RUDIN: I'd like one, Your Honor, because that  
19 was supposed to be done last week and two days before it was  
20 going to be done we had an issue. So once that issue is  
21 resolved, I don't know why we can't take it.

22 MR. LARKIN: Well, I need to --

23 THE COURT: All right. So --

24 MR. LARKIN: I'm sorry, I need to confer with the  
25 witness and find out dates. I just don't know what her

1 availability is in the next couple of weeks. Certainly, we  
2 can confer and agree on a date. I can't agree to a date here  
3 today because I just don't have access to the witness.

4 MR. RUDIN: That's fine.

5 MR. LARKIN: She's not here as you can see.

6 THE COURT: So how about by June 28<sup>th</sup>, or June --

7 MR. LARKIN: I assume that that should be okay but  
8 I'll just --

9 THE COURT: Sure.

10 MR. LARKIN: -- I'll get her schedule, Your Honor.

11 THE COURT: By June 28<sup>th</sup> and if that's not good,  
12 you'll let me know tomorrow.

13 MR. LARKIN: Yes, Your Honor. Thank you. And  
14 that's for ADA Wrenn.

15 THE COURT: That's right.

16 THE COURT: Okay. So are we set on those  
17 depositions?

18 MR. RUDIN: Yes, Your Honor.

19 MR. LARKIN: Yes, Your Honor.

20 THE COURT: All right.

21 MR. RUDIN: Your Honor, again, I'm just going to  
22 make a suggestion, but it seems to me that before we talk  
23 about when we're going to do Mr. Hynes, if and when we're  
24 going to do Mr. Hynes that it might be helpful to focus on the  
25 outstanding document issues because some of the document



1 demands may affect when it's optimal to take his deposition.

2 THE COURT: Okay. Are we talking about the emails  
3 or we're talking about other issues.

4 MR. RUDIN: Well yeah, emails and the personnel  
5 records and disciplinary records if there are any.

6 MR. LARKIN: Your Honor, I was just going to say  
7 before we even do that, did the Court want to address our  
8 motion with regard to the Quezada case in connection with the  
9 Wrenn deposition? I think that's a discrete issue. I'm not  
10 sure if Your Honor wants to deal with that right now.

11 THE COURT: Well, my inkling -- well, my inclination  
12 on it is at this point not to allow questioning on that at  
13 this point. However, if there is a decision on the Quezada  
14 case and there is a finding of some kind of misconduct there,  
15 then I believe that the plaintiff would be entitled to depose  
16 her on that.

17 MR. LARKIN: So would it make sense then -- I mean I  
18 don't want to produce the witness twice. I'm happy to produce  
19 the witness whenever the Court directs, but it seems to me  
20 that --

21 THE COURT: You may have to produce her twice  
22 because we don't when the Quezada case will be resolved.

23 MR. LARKIN: Would it make sense to move that  
24 deposition closer to the end of discovery? Because as I  
25 understood, the main purpose of counsel's deposition notice of

1 Ms. Wrenn was to ask her about the Quezada case. I could be  
2 wrong. If he wants to focus on the Collins case, you know, in  
3 which case it wouldn't really matter. Would it make sense to  
4 move that deposition till later in the process here? Because  
5 if we do get a decision from Judge Matsumoto, maybe we could  
6 only produce her once if needed.

7 MR. RUDIN: Your Honor, whether Judge Matsumoto  
8 finds that there's a basis to grant habeas relief or to grant  
9 an evidentiary hearing given the restrictions of the habeas  
10 statute is a far different question than what gives us the  
11 opportunity to develop our case here. We already know in the  
12 Quezada case that Ms. Wrenn submitted a response to a 440  
13 motion which she swore under oath that there was no material  
14 witness order. We now know that after discovery was granted  
15 in federal court that the order appeared. And we know that  
16 the 440 judge was led to deny the motion because the DA's  
17 Office took the position that there had been no material  
18 witness order, there had been no --

19 MR. LARKIN: I only asked about the schedule for Ms.  
20 Wrenn.

21 MR. RUDIN: No, but I'm --

22 MR. LARKIN: I think that we can produce her before  
23 the -- we can produce her before the 28<sup>th</sup> and the question will  
24 be limited to the Collins case as Your Honor just directed,  
25 and --

1 THE COURT: Well, no, I didn't say to the Collins  
2 case. What I said is not into the Quezada case.

3 MR. LARKIN: I apologize.

4 THE COURT: But again, the broader question that Mr.  
5 Rudin asked about other witnesses he can still ask as to  
6 practices in the office. And on Page 5 of your June 7<sup>th</sup> letter  
7 you talked about how Ms. Wrenn responded to Judge Matsumoto  
8 that picking up Mr. Salcedo and keeping him in a hotel till he  
9 had to testify was a normal procedure on a material witness  
10 warrant. I think you could ask about what the normal  
11 procedures were on the material witness warrants. You can ask  
12 that question. I just don't want you to go into detail on the  
13 Quezada case --

14 MR. RUDIN: But the only thing --

15 THE COURT: -- for two reasons. One reason because  
16 I don't want it to be a back door way to get around Judge  
17 Pohorelsky's ruling, not that that's what you're intending to  
18 do, but it would end up having that effect. And number two,  
19 that there hasn't been a finding of misconduct there.  
20 However, you are entitled to question about practices and  
21 specifically question about practices having to do with  
22 material witnesses.

23 MR. RUDIN: Your Honor, we don't know --

24 MR. LARKIN: What would typically happen with regard  
25 to those material --

1 THE COURT: Let him finish.

2 MR. LARKIN: I'm sorry, Your Honor.

3 THE COURT: Excuse me. We don't have no idea -- the  
4 issue that's in front of Judge Matsumoto right now is whether  
5 or not under the habeas corpus, extremely stringent rules for  
6 habeas corpus the defense is entitled to -- I mean the  
7 petitioner is entitled to develop the evidentiary record. And  
8 Your Honor I'm sure is very familiar with habeas as I'm sure  
9 you deal with it all the time. So that's a -- she may not  
10 even reach the issue of whether or not there was misconduct.  
11 She may defer to the findings of the state court.

12 And furthermore, we're not a party to that action.  
13 Regardless of what Judge Matsumoto decides, we're entitled to  
14 show in our case that this was part of a -- this is evidence  
15 of customer practice, that the DA's Office acted in bad faith.  
16 We're not trying to bring out any information about the  
17 underlying criminal prosecution, about the facts of the case,  
18 about any witnesses who haven't been revealed, about any  
19 police reports that were never disclosed. All we want to find  
20 out is why the district attorney, ADAs Shaban and Wrenn  
21 represented to a state court judge that there was no material  
22 witness order and then it came out years later, and how that  
23 happened, and whether or not there was any disciplinary  
24 inquiry in the office about it, whether there was any concern  
25 in the office that an individual has been kept in prison for

1 all these additional years after a representation to a state  
2 court judge that turned out not to be true, which happens to  
3 be exactly what happened in Jabbar Collins' case. It's  
4 identical. For years they denied that there was a material  
5 witness order or that any witness had to be pressured or  
6 coerced into testifying, and then it turned out that not only  
7 was there a material witness order that they have been denying  
8 for 15 years, but the witness spent a week in jail before  
9 spending a week under armed guard in a hotel.

10 MR. LARKIN: And the reason for that was the witness  
11 --

12 MR. RUDIN: It's exactly the same scenario. And ADA  
13 Wrenn happens to have been the person who was selected by the  
14 Rackets Bureau of the DA's Office to be involved with Monique  
15 Ferrell in investigating the Jabbar Collins case when we filed  
16 a motion in 2006 which was exactly the same time that she was  
17 representing that there was no material witness order in the  
18 Quezada case. I mean the cases duck tail so closely.

19 All I want to ask is what she knew in 2006, what she  
20 found out from ADA Shaban about his knowledge, why she  
21 represented that ADA Shaban did not know about a material  
22 witness order, and when they learned about the order, and why  
23 didn't they turn it over until lightening struck and the  
24 Second Circuit granted a second habeas petition which it does  
25 about once a year? Also exactly like the Collins case. If

1 not for the fact that Judge Irizarry granted a federal  
2 evidentiary hearing, most of the information we now have, a  
3 lot of the information we now have never would have come out.

4 MR. LARKIN: Please, Your Honor, I can't sit and  
5 listen to this anymore without -- really, I'm sorry. But  
6 there were a series of conferences in the Quezada case,  
7 lengthy conferences. There was one on December 22, 2011.  
8 There was another one in January. There was another one I  
9 believe in March of that year in which Judge Pohorelsky heard  
10 both sides and heard ADA Wrenn explain how it is that she  
11 found out about the material witness order in that case. It  
12 involved a lot of digging through old logbooks before she was  
13 able to uncover the evidence concerning that material witness  
14 warrant. And when she did uncover it, of course it was  
15 promptly -- the existence of the warrant I believe was  
16 promptly disclosed.

17 The point is there's already a complete record of  
18 the circumstances that led the DA's Office to locate the  
19 warrant in that particular case. If counsel wants to use that  
20 case at trial in this case, the record is there. He can make  
21 whatever arguments he needs to make to Judge Block. It seems  
22 to me -- and then Judge Block would decide, the district  
23 court, or if he refers it to Your Honor, Your Honor would  
24 decide in limine what counsel could use at trial. The concern  
25 we have is further development of a record, further

1 development in a situation where it's not really appropriate  
2 where Judge Pohorelsky has limited discovery in the case and  
3 where the rules on habeas also limit discovery. And it seems  
4 to allow a litigant in a separate civil case to start prying  
5 around into matters that are the subject of a current pending  
6 habeas petition, it's just not the way that the discovery  
7 rules are supposed to work here.

8 MR. RUDIN: Your Honor, Mr. Larkin just --

9 THE COURT: Hold on one second. What I'm  
10 permitting, and perhaps we need to refine this a little bit,  
11 but what I'm permitting is Monell discovery.

12 MR. LARKIN: Yes, Your Honor.

13 THE COURT: Okay. So the Monell discovery is  
14 whether or not there's a normal procedure, pattern, practice,  
15 whatever, in the office concerning material witnesses. Now,  
16 in gross what I'm not permitting is discovery in the Quezada  
17 case. Now, it may be that there's some overlap, as Rudin's  
18 saying and maybe Mr. Larkin is saying, between what's the  
19 general pattern or practice in the office and what happened in  
20 the Quezada case. Mr. Rudin can ask questions about what the  
21 normal procedure is on a material witness warrant, whether  
22 that -- and I suppose whether that's in fact what happened in  
23 the Quezada case, whether what happened in that case was part  
24 of the normal procedure. But I don't want you to go into  
25 other facts dealing with the Quezada case because that's not

1 before the Court. The issue before the Court is whether or  
2 not there is a normal procedure under a material witness  
3 warrant which I think you believe is to deceive or mislead  
4 state court judges into deciding warrants and then not  
5 disclose to defendant's counsel that the witnesses are being  
6 kept against their will in custody somewhere.

7 MR. RUDIN: Well, that judges are being deceived  
8 with falsely notarized or falsely sworn applications and that  
9 contrary to the orders requiring that the witnesses be brought  
10 forthwith to court, they're instead brought to the DA's Office  
11 to be interrogated and some of them then end up in hotels  
12 being held against their will. Others of them end up in jail  
13 and --

14 MR. LARKIN: What happens, Your Honor --

15 MR. RUDIN: May I please --

16 MR. LARKIN: What happens --

17 THE COURT: Wait. We're not getting into what the  
18 practice is, we're just getting into the questions.

19 MR. LARKIN: Your Honor --

20 THE COURT: The question that you can ask is when  
21 she said this is a normal procedure on a material witness  
22 warrant, you can ask her what she meant by that and then you  
23 can ask whether it is a normal procedure to do the things that  
24 you mention or not.

25 MR. RUDIN: Your Honor, Mr. Larkin --



1 THE COURT: Did that in fact -- and is what happened  
2 in the Quezada case the normal procedure?

3 MR. RUDIN: But Mr. Larkin a moment ago said that  
4 Ms. Wrenn has already spoken extensively on the record about  
5 when she discovered the order, how she discovered it, and why  
6 she did or did not disclose it at various times. That's all I  
7 want to ask her about. She's already gone on the record about  
8 it, so why can't I ask about it? I'm not asking for any  
9 information that she hasn't already fully discussed.

10 THE COURT: You don't want to go beyond the record?

11 MR. RUDIN: I'm sorry?

12 THE COURT: You don't want to go beyond the record?

13 MR. LARKIN: The concern, Your Honor --

14 MR. RUDIN: I just want to go under oath --

15 MR. LARKIN: Absolutely [inaudible]-

16 MR. RUDIN: -- and ask her the questions that she's  
17 already talked about on the record in front of a magistrate  
18 judge who didn't have her under oath and didn't have perhaps  
19 the same incentive that I have to ask ethical questions.

20 MR. LARKIN: That's the concern --

21 THE COURT: So if counsel, I'm sorry, so if counsel  
22 were to stipulate that her statement is -- if she were to  
23 swear that the statements that she made before Judge  
24 Pohorelsky under oath -- not under oath, at the oral argument  
25 in the habeas petition, is that what you're looking for?

1 MR. RUDIN: No, but I want to be able to challenge  
2 her. I want to be able to cross examine, to ask her more  
3 skeptical questions. I'm also willing to do it under seal.  
4 If Your Honor's concerned that the information I'm obtaining  
5 will be shared with counsel on the other case, then as to that  
6 portion of her deposition where I go beyond what she's --  
7 whatever part Your Honor thinks should be under seal, I'll be  
8 willing to keep under seal until further order of the Court.

9 MR. LARKIN: Your Honor -

10 THE COURT: But again, the parameters that I'm  
11 talking about would be what's the [inaudible] here? What is  
12 the pattern and practice or normal procedure on a material  
13 witness warrant? Did that happen in the Quezada case or  
14 didn't it? That's essentially what we're talking about,  
15 correct?

16 MR. RUDIN: Well, what --

17 THE COURT: And how did you discover it?

18 MR. LARKIN: Your Honor, [inaudible]--

19 MR. RUDIN: How did they discover it and the final  
20 thing is why didn't you disclose earlier? An explanation of  
21 why she didn't disclose earlier and why she made the  
22 representations that she made to the Court.

23 MR. LARKIN: Your Honor, none of that should be  
24 permitted I think because, you know, first of all I am sure  
25 that ADA Wrenn would be willing to stipulate that the

1 statements that she made to Judge Pohorelsky in the  
2 conferences in the Quezada case were accurate. We would  
3 stipulate to that, that they're accurate to the best of her  
4 knowledge. There's no question. I don't think there's any  
5 question about that. So that should cut out any questioning  
6 about what's in that record in terms of what she learned and  
7 when she learned it.

8           As far as a sealing order, I don't think that that's  
9 adequate protection here. It's the whole point of having  
10 limited discovery and habeas proceedings and that's what  
11 congress has mandated. And to allow further cross  
12 examination, skeptical questioning as counsel puts it,  
13 somebody who hasn't got an incentive to make the District  
14 Attorney's Office look as bad as possible and embarrass Ms.  
15 Wrenn, which is part of the reason why I'm sure Mr. Rudin  
16 wants the deposition -- you know, and I apologize for phrasing  
17 it that way, but that's what's going on here. You know, it  
18 just is not adequate. I think the Court's instinct initially  
19 was to allow questioning about the general practices. Whether  
20 or not it was followed in the Quezada case cross over into  
21 another area that is not relevant, it seems to me, to this  
22 case. There's been no finding of misconduct, certainly no  
23 finding of misconduct in the Quezada case. Mr. Quezada's  
24 conviction stands today. Judge Matsumoto has a significant  
25 serious responsibility. She's got to consider whether there

1 ought to be an evidentiary hearing. And you know, I think the  
2 Court's instinct is correct. If counsel wants to ask about  
3 practices generally, that is okay. What the witness will say  
4 is that the DIs appear usually with a material witness  
5 warrant. They approach the witness, they explain  
6 circumstances. They tell the witness that they have an order  
7 authorizing the arrest of that witness, which is what a  
8 material witness order is. And the witnesses nine times out  
9 of ten say, "Look, don't take me into custody, don't arrest  
10 me. I will come with you. I will speak to the DA." And  
11 that's what happened in the Quezada case. That's exactly what  
12 happened. What happened is the Dis' memo book entries from  
13 that time from that case show that he and another detective  
14 investigator approach Mr. Quezada, they explained that they  
15 had a material witness warrant and he came with them  
16 voluntarily.

17 THE COURT: Mr. Salcedo.

18 MR. LARKIN: Excuse me. Forgive me. Mr. Salcedo,  
19 the witness. I'm sorry, Your Honor. And the witness came  
20 with them voluntarily. He did not need to be taken into  
21 custody. And Judge Pohorelsky acknowledged during one of  
22 those conferences that frequently that is what happens. He  
23 also acknowledged that it wouldn't make much sense for a  
24 defense lawyer to cross examine a witness about a material  
25 witness order because the witnesses, like the witnesses in

1 this case, were afraid of the defendant. Mr. Santos was  
2 afraid of Mr. Collins. He saw Mr. Collins, he all but saw him  
3 shoot and kill an innocent civilian and then flee the scene.

4 THE COURT: All right.

5 MR. LARKIN: He was scared. That's what happened in  
6 this case.

7 THE COURT: All right. But we're looking at pattern  
8 and practices.

9 MR. LARKIN: Yes.

10 THE COURT: And that's all we're looking at. And  
11 the question is to what extent did there have to be some  
12 detail about what happened in the Quezada case in order to  
13 have legitimate Monell discovery? And I think the answer is  
14 number one, that there has to be a question as to whether what  
15 happened in the Quezada case complies with the office practice  
16 and procedures, and Mr. Rudin can certainly ask that question,  
17 and if the answer is no it didn't in some ways, then he can  
18 ask in what ways did it not comply and was anything done about  
19 it? And that's really it. And if it did comply with the  
20 procedures, then I assume she will explain what those  
21 procedures are.

22 MR. RUDIN: Your Honor, one of the concerns --

23 MR. LARKIN: The concern though, Your Honor, I'm  
24 sorry, the concern, Your Honor, is that I think the Court is  
25 permitting questioning about the specifics of that case, that

1 would not be consistent with -- I mean we were seeking a  
2 protective order preventing that and I think the Court ought  
3 to -- I don't think there ought to be questioning in that  
4 area. I think that questioning -- the Court's initial  
5 suggestion is that questioning about general policies would be  
6 appropriate and ADA Wrenn has indicated some knowledge of  
7 those general policies and she can be questioned about them.  
8 But to be asked specifically whether they were followed in the  
9 Quezada case or what happened in the Quezada case, again, I am  
10 sure that ADA Wrenn would agree and we would stipulate that  
11 her statements to Magistrate Judge Pohorelsky were accurate to  
12 the best of her knowledge when she made them. And you know,  
13 that should take care of any question about what happened in  
14 that particular case. There shouldn't be further deposition  
15 questioning, it seems to me, Your Honor, as to the specifics  
16 of that case. The policies I can understand testimony on  
17 that.

18 THE COURT: All right. Well, my ruling is that he  
19 can inquire into the policies and if -- there are two  
20 different kinds of cases, ones a habeas case and ours is a  
21 Monell claim. And in order to adequately depose the witness  
22 I'm now convinced that Mr. Rudin is going to have to ask the  
23 witness questions about whether what happened in that case did  
24 or did not comply with the policy. If it complied with the  
25 policy, then it's right on all fours with what's happening in

1 this case. If it didn't comply with the policy, then it would  
2 illuminate what that policy was, and I think he has a right to  
3 find that out.

4 MR. LARKIN: But I think, Your Honor, it appears --  
5 well, I mean we certainly don't accept Mr. Rudin's description  
6 of what the policy was. The policy wasn't to take witnesses  
7 and lock them up in hotel rooms. The policy was to explain to  
8 the witness that there was a material witness order  
9 authorizing that witness's arrest and giving the witness an  
10 opportunity to voluntarily come with the investigator so that  
11 they would not have to be placed under arrest. And nine times  
12 out of ten witnesses agreed to do that.

13 THE COURT: Okay, so if that's the policy --

14 MR. LARKIN: They weren't locked in hotels.

15 THE COURT: I'm sorry to interrupt. But if that's  
16 the policy, if that's in fact the policy, that's what she'll  
17 say. And if what happened in the Quezada case complied with  
18 that policy, then she'll say that. If it didn't comply with  
19 that policy, she'll say that it didn't and Mr. Rudin will ask  
20 whether there was any discipline, because I believe he's got a  
21 discipline claim there, and then we'll move on.

22 MR. LARKIN: But Your Honor, the witness --

23 THE COURT: Look, I think we've belabored this  
24 enough. I understand what your position is but I think the  
25 only interest -- if this were normal discovery we would simply

1 say it's relevant in terms of the federal rules then it's  
2 reasonably calculated to lead to the discovery of admissible  
3 evidence. The only reason that you're asking that it not be  
4 permitted is that another judge has ruled that in the context  
5 of a habeas proceeding it's inappropriate. And I agree that  
6 there should not be back door discovery that would benefit  
7 anyone in any habeas proceeding where another judge has ruled.  
8 It's not appropriate for me to overrule another judge's  
9 decision or comment on it.

10 So what I'm trying to lead as best I can the path  
11 that Mr. Rudin has to take. However, to the extent that it's  
12 difficult to draw a bright line, I think his suggestion of  
13 sealing is good. And to the extent you think it goes over the  
14 line, you can ask me to strike it from the deposition of  
15 course.

16 MR. LARKIN: Okay. So just that so we're clear  
17 then, the deposition of Ms. Wrenn to the extent it involves  
18 questioning about policies concerning material witness orders  
19 and the Quezada case is to be sealed?

20 THE COURT: Yes.

21 MR. LARKIN: And Mr. Rudin is to follow that sealing  
22 order and not release the deposition to anybody associated  
23 with the Quezada case.

24 MR. RUDIN: Your Honor, I thought you said as to the  
25 Quezada case but the questions about --



1 THE COURT: As to the Quezada case.

2 MR. RUDIN: -- policies apart from the Quezada case  
3 is --

4 THE COURT: Is not sealed. Right. Just the Quezada  
5 case.

6 MR. LARKIN: The policies generally don't -- I'm  
7 sorry. The policies generally would not be sealed --

8 THE COURT: Right.

9 MR. LARKIN: -- but anything concerning the Quezada  
10 case would be sealed?

11 THE COURT: That's right, because that's your  
12 legitimate interest.

13 MR. LARKIN: Thank you, Your Honor. I appreciate  
14 that.

15 MR. RUDIN: And Your Honor, may I ask her, just to  
16 be clear, may I ask her about why the -- her knowledge about  
17 why the material witness order and related circumstances were  
18 not disclosed until whenever they were disclosed? Because  
19 that is part of our Brady pattern and practice claim.

20 THE COURT: Yes, because that's part of is it the  
21 practice not to.

22 MR. RUDIN: Yes, Your Honor. Thank you. Why, she's  
23 going to say she didn't know about it, obviously she didn't  
24 know about it. Why?

25 THE COURT: Then he's wasting his money.

1 MR. RUDIN: I mean that's the obvious question and  
2 answer?

3 THE COURT: Okay.

4 MR. RUDIN: We're not wasting our money.

5 MR. LARKIN: Not for the first time. Sorry.

6 THE COURT: It may be the outcome but you have to  
7 live together for the next 12 months. Okay.

8 MR. RUDIN: So Your Honor, that deposition is by  
9 June 28<sup>th</sup> as I understand it.

10 THE COURT: Yes.

11 MR. RUDIN: So should we turn to the documents now?

12 THE COURT: All right. Is anybody here on another  
13 case? I just want to make sure that there's no -- we did have  
14 another case. Okay. Next?

15 MR. RUDIN: Your Honor, our proposal we take up the  
16 emails last. Why don't we deal with the documents because I  
17 think that's the most complicated.

18 THE COURT: Okay. Mr. Larkin, do you agree?

19 MR. LARKIN: Oh yes, that's certainly reasonable,  
20 Your Honor, yes.

21 MR. RUDIN: All right. Then as to the personnel  
22 records, I know Ms. Krasnow just gave us two additional  
23 records today so we received by my count 19 out of 50 and we  
24 would like to get the other 31 or so as soon as possible.  
25 Again, this is something we requested several months ago and I

1 have no idea what resources the District Attorney's Office is  
2 devoting to finding and copying these records, but I just  
3 don't understand. There's been no showing why it's so  
4 difficult to find the personnel records of 50 ADAs and to go  
5 through them and photocopy them. But you know, whatever  
6 defendants have to say about that, fine, but I just think we  
7 should have a deadline and get that done because it's a  
8 predicate to some of the other depositions.

9 THE COURT: Mr. Larkin, what's a reasonable  
10 deadline? Ms. Krasnow?

11 MR. LARKIN: Co-counsel can address that. I'm  
12 getting tired, Your Honor. Sorry.

13 MS. KRASNOW: I just wanted to --

14 THE COURT: Would you like to take a break?

15 MS. KRASNOW: I just wanted to address one thing,  
16 that it's not delay on the part of the DA's Office. The  
17 difficulty is once I get the files, they're extremely  
18 voluminous, so it's extracting the relevant documents and then  
19 making redactions. So that's the issue. I've already  
20 produced 19 files. Each file that I produce is about 100  
21 pages. So it's not a small task. And with respect to the  
22 remaining files, I would ask for two or three weeks to finish  
23 the production. I think that's a reasonable amount of time.

24 THE COURT: So we're looking at the end of June  
25 essentially. Is that like three weeks.

1 MS. KRASNOW: And if you -- well, two to three weeks  
2 from today --

3 THE COURT: Two weeks is the 26<sup>th</sup>, three weeks is  
4 July 3<sup>rd</sup>. Mr. Rudin?

5 MS. KRASNOW: I would ask for the 3<sup>rd</sup>, Your Honor.

6 THE COURT: Mr. Rudin, is the 3<sup>rd</sup> okay?

7 MR. RUDIN: July 3<sup>rd</sup>?

8 THE COURT: Yes.

9 MR. RUDIN: That's fine.

10 THE COURT: Okay.

11 MR. RUDIN: Your Honor, as a firm deadline, Your  
12 Honor.

13 THE COURT: Yes.

14 MR. LARKIN: Your Honor, I think we're working on  
15 the assumption that our client has all of them gathered by  
16 now, and these are personnel files that go back 30 years in  
17 some cases and prior to even 1980, so we're doing our best to  
18 gather them. I believe that our client has them all. If  
19 that's not correct and we're running into difficulty with a  
20 few files because of their age, we'll let counsel know and  
21 we'll let the Court know. But I think the July 3<sup>rd</sup> deadline is  
22 reasonable, Your Honor.

23 THE COURT: I'm hoping to avoid problems. You  
24 should ask your client as soon as possible whether there are  
25 any files that haven't been located and tell Mr. Rudin right

1 away.

2 MS. KRASNOW: Yes.

3 THE COURT: Okay.

4 MR. RUDIN: All right. Your Honor, the defendants  
5 had agreed to provide by June 1<sup>st</sup> whether or not they are going  
6 to contend that any ADAs have been disciplined under Mr.  
7 Hynes' tenure for misconduct in the prosecution of a criminal  
8 case. Mr. Larkin has made certain statements about that but I  
9 don't know whether he intended to be bound or he meant that  
10 that was his initial supposition, so I'm not going to repeat  
11 the statements. But it seems to me that we should have a firm  
12 deadline because we need to plan discovery around what the  
13 answer is.

14 MR. LARKIN: Your Honor, the plaintiff is going to  
15 have an ample opportunity to depose witnesses about  
16 discipline, it seems to me. I'm not prepared today to say  
17 that -- to give names or to give specifics about who was  
18 disciplined and what we're going to contend at trial. I mean  
19 we do have a little bit of time. We've got to the end of  
20 August to finish depositions. It seems to me that if we were  
21 to take -- once we identify or explain how many ADAs or which  
22 ADAs were disciplined for certain types of misconduct that  
23 there might be followup discovery and that plaintiff would be  
24 entitled to take some followup discovery if it were necessary.  
25 It seems to me this is a 26(a) type issue and the 26(a)

1 obligation is ongoing throughout the case. So I mean end of  
2 July doesn't seem unreasonable for us to sort through all the  
3 records that we have and take a position one way or the other  
4 as to how many ADAs were disciplined, why were they  
5 disciplined.

6 THE COURT: Okay. Before we make a decision, or  
7 before I make a decision on this, let's go through the other  
8 issues because it sounds as though we need to prioritize the  
9 discovery because I understand you're increasing by a third  
10 starting next week. You're going to have one more person  
11 working on the case.

12 MR. LARKIN: We hope so, Your Honor. We're  
13 interviewing Friday and we hope the person can start as soon  
14 as possible.

15 THE COURT: Okay. All right. So the resources that  
16 counsel have ought to be prioritized. And so let's just see  
17 what you want to get first and then we'll have some  
18 discussions of the emails. Is there any one of the documents  
19 that you want to talk about?

20 MR. RUDIN: Well yes, Your Honor. There were  
21 records, hotel custody records, detective investigator logs --

22 THE COURT: Right.

23 MR. RUDIN: -- and memo books, the field and vehicle  
24 logs, particularly as to the Detective Investigators Maher and  
25 Bondor who we'll be deposing but more generally. We haven't

1 gotten any of that.

2 THE COURT: Has that been located? Is there a  
3 response from the City I should be looking for?

4 MR. LARKIN: Your Honor, I think with regards to the  
5 logs and the memo books, you know, there are so many -- I mean  
6 I'm not sure if counsel's talking about logs concerning this  
7 case, the Collins case, and memo book entries from the DIs who  
8 were involved in this case. We have no objection producing  
9 those memo books if they still exist. I highly doubt that  
10 they still do exist. But I'm just not clear on exactly what  
11 it is we're talking about here.

12 THE COURT: Mr. Rudin?

13 MR. RUDIN: Ms. Rosenblatt is --

14 THE COURT: Ms. Rosenblatt.

15 MR. RUDIN: -- going to handle that issue.

16 MS. ROSENBLATT: As to the logs, the field logs  
17 we're interested in do pertain to the Collins case, at least  
18 the ones that we think should be the easiest to locate, and  
19 those are the ones that we've identified by Bates number in a  
20 previous letter and in a conference too, but I can do it  
21 again. And that's the logbook where it shows that it was  
22 opened in 1993 but then the first period that we receive  
23 entries for I believe is March of 1995 and we wanted the,  
24 because they're relevant to Mr. Collins' case, we wanted the  
25 entries going back to January of 1995. So we think that that

1 should be all within the books that indicates it was opened in  
2 1993.

3 MR. LARKIN: I'm pretty sure that that book is  
4 missing either in whole or in part because I recall a  
5 discussion with the client about this. However, if you would  
6 send me those -- if counsel could send me those Bates numbers,  
7 I mean this is something that we should be able to nail down  
8 pretty quickly. Where are we today? June 12<sup>th</sup>. I think end  
9 of June is fair for us to nail down what exists and what we  
10 can produce, Your Honor. And forgive me for losing track of  
11 this issue with regards to this one segment of the discovery.

12 MR. RUDIN: Your Honor, I understand that the  
13 limited discovery that we received from that logbook, which  
14 just happens to be outside the time period of most interest,  
15 was turned over by the city in 2011, so I don't understand how  
16 that logbook could be lost if we received discovery from that  
17 logbook during the course of this lawsuit. If it's lost, we  
18 would request an affidavit from a knowledgeable party about  
19 what happened to it.

20 MR. LARKIN: Those parts of the file that were  
21 produced in 2011 were created and put in the file either  
22 during the 440 motion period or the habeas in 2010 or 2006.  
23 It wasn't just searched for and located in 2011. It had  
24 previously been located as part of litigating the post  
25 conviction proceeding. So --



1 THE COURT: That might be a question for the  
2 depositions as well.

3 MR. RUDIN: Well, we don't know who had that  
4 responsibility. That's why we'd like some disclosure of who  
5 handled that logbook when it was last seen. If it was for the  
6 440 or the federal habeas proceedings then we don't know who  
7 to depose. It's awfully concerning to us that at a time when  
8 we were contending that witness Oliva was produced to the DA's  
9 Office and recanted in January or February and there are a  
10 series of records indicating circumstantially that that  
11 happened at the end of January, early February and they have a  
12 logbook, and then they only produce what happened in March,  
13 it's very troubling. So --

14 MR. LARKIN: What the records show is that there  
15 were efforts made to contact Mr. Oliva but that Mr. Oliva did  
16 not show up for the meeting. They did schedule a meeting but  
17 he didn't show up. That's what the records show.

18 In any event, Your Honor, I understand the relevance  
19 of the logbook and, you know, this is something that we can  
20 nail down and will now -- by setting these priorities I think  
21 it's very helpful for us because we can sit down with our  
22 client and block out the time we need to sit down with them  
23 and go through step by step what the specifics are of what  
24 remains outstanding and this appears to be one of them. So if  
25 counsel would send us those Bates numbers we will absolutely

1 do that in the next say two weeks. I think that's reasonable.

2 MS. ROSENBLATT: And there are just two other  
3 categories of logbooks and we also have provided the Bates  
4 numbers and I'm happy to do it again, and that's the sign-in  
5 logs and the vehicle logs. And it's the same issue. They're  
6 just different kinds of logbooks.

7 MR. LARKIN: I understand the relevance of those  
8 materials. I think that's -- I think we can do this in two  
9 weeks, Your Honor.

10 THE COURT: Okay. Good.

11 MS. ROSENBLATT: And then so the next thing is the  
12 memo books. And I understand that there's an issue with whet  
13 the memo books are in the possession of the DIs or if they're  
14 in the DA's file, but we don't know the answer to that. And  
15 obviously, the memo books that we're asking for are relevant.  
16 So I believe that Mr. Larkin suggested that we should wait  
17 until the deposition to get those but that's not workable.

18 MR. LARKIN: Let me cut through it, Your Honor. The  
19 DA's file does not have the memo books. That representation  
20 was made in the habeas proceeding or in the 440 as Mr. Rudin  
21 knows because he handled both of those proceedings. So he  
22 knows that the DA does not have those memo books. The only  
23 question is whether the DIs individually kept their own memo  
24 books and some do and some don't. So we will absolutely find  
25 out whether the detective investigators have them. If they

1 do, then we'll make the entries available, we'll produce them.  
2 If they don't, we'll inform counsel.

3 THE COURT: And the same date here?

4 MR. LARKIN: I beg your pardon?

5 THE COURT: June 28<sup>th</sup>, the end of the month?

6 MR. LARKIN: We just need to get in touch with them  
7 between now and then. Are we going to be able to do that?  
8 Okay. I think we should be able to do that. The only concern  
9 I have is with Maher. I know that DI Bondor has been in touch  
10 with my co-counsel.

11 THE COURT: Okay.

12 MR. LARKIN: We'll absolutely make an effort to do  
13 that. If we run into difficulty we'll promptly notify counsel  
14 and we'll notify the Court.

15 THE COURT: Okay.

16 MS. ROSENBLATT: Just to be clear, it's not -- Maher  
17 and Bondor weren't the only two DIs who were involved in the  
18 Collins case. There were I believe a total of 12 and we have  
19 provided those names. So it seems to me that it's as simple as  
20 a phone call. I don't know how many steps you need to get the  
21 phone number, but --

22 MR. LARKIN: Well, DIs -- and I mean I'm not aware  
23 of 12 detective investigators being involved in this case or  
24 involved with any of the witnesses in ways that it's worth it  
25 for us to chase them down to find the memo books. So if we

1 need to have that discussion, we can have it. If we need to  
2 move for relief, we can move for relief. But calling 12 Dis  
3 because their names might appear on a piece of paper someplace  
4 doesn't really seem to be all that productive. I mean the  
5 allegation in the case is that Maher and Bondor were involved  
6 with getting the three witnesses either to court or to testify  
7 and I believe one or both of them went to Puerto Rico to look  
8 for Adrian Diaz. So there's no allegation that any other  
9 detective investigator was involved in any sort of purported  
10 misconduct if you will with respect to those witnesses. So  
11 I'm not sure why 12 DIs are even relevant.

12 THE COURT: Well, one question would be whether  
13 their memo books are in the DA's files. If they're in the  
14 DA's files then your life is easy.

15 MR. LARKIN: We've produced everything in the DA's  
16 file.

17 THE COURT: Produced everything? Okay.

18 MR. LARKIN: Everything. So to the extent there's a  
19 memo book of any detective investigator, it's got to be in  
20 there.

21 MR. RUDIN: I have seen a number of depositions  
22 where the indication is that for some reason detective  
23 investigators from the DA's Office would take their memo books  
24 with them. So Mr. Larkin's probably right. I mean there's a  
25 chance that they're there but he's probably right. But just

1 to respond to what he just said, for example, Mr. Oliva was  
2 brought to the DA's Office on at least one occasion before he  
3 testified after refusing in writing to go voluntarily and they  
4 took him anyway. That day he was not taken by Maher and  
5 Bondor. There are other detective investigators who are  
6 listed as having taken him.

7 In addition, Mr. Santos, who was held first in jail  
8 and then a hotel, we have received discovery of the names of  
9 detective investigators who guarded Mr. Santos. I know from  
10 other cases that detective investigators would note in their  
11 memo books and sometimes in logbooks which we've also asked  
12 for, problems with witnesses, a witness being impaired, a  
13 witness refusing to cooperate, a witness making a statement  
14 that's relevant. So we don't know what we're going to get but  
15 we're entitled to look. It could be something --

16 THE COURT: You're looking for Brady material.

17 MR. RUDIN: I'm sorry?

18 THE COURT: You're looking for Brady material or  
19 other kinds of --

20 MR. RUDIN: Well, Brady material or indications the  
21 witness was not --

22 THE COURT: Cooperative.

23 MR. RUDIN: -- cooperative the way they were  
24 portrayed.

25 MR. LARKIN: With respect to the --

1 MR. RUDIN: Or coerced.

2 MR. LARKIN: With respect to the two main DIs I  
3 think June 28<sup>th</sup> is realistic. With respect to the others, if  
4 they still work at the DA's Office, then we could probably  
5 find out whether they still have their memo books within the  
6 next two weeks. But if they're retired, it's going to be a  
7 lot harder to track them down. We'll absolutely do our best I  
8 suppose but I guess we'll look at the list of 12 and see what  
9 role they play in the case and make an effort to find out  
10 where they are now.

11 MR. RUDIN: There may be less than 12. We'll try to  
12 narrow it down.

13 THE COURT: Okay. Try to narrow it down. And I  
14 think the principle is if they in fact did control, hold in  
15 custody, or drive, or transport any of the material witnesses  
16 then they would be relevant.

17 MR. LARKIN: Then they would be relevant, yes, Your  
18 Honor.

19 THE COURT: Okay.

20 MR. RUDIN: Your Honor, there were case materials in  
21 four cases that make up our evidence of customer practice and  
22 failure to discipline, the Marshal case, the Hamilton case,  
23 the Acevedo case and the Quezada case where the City agreed to  
24 provide the materials that we requested in our discovery  
25 demand and they haven't been provided.

1 MS. KRASNOW: We have already received some of the  
2 materials for a few of those cases but I think this is part of  
3 the issue of we can only do so many things at once. So I've  
4 been focusing on the personnel file production. So I haven't  
5 yet been able to turn to the production of those other  
6 materials. I think a reasonable date for that would be 30  
7 days from now to get all those materials produced.

8 THE COURT: Sold. July 12<sup>th</sup>, which is a Friday.  
9 Okay.

10 MR. RUDIN: All right. So I think now we're left  
11 with the discipline question which I'm not sure Your Honor  
12 wanted to deal with today and, you know, the disclosure by  
13 some deadline of whether any ADAs were disciplined and the  
14 emails. Oh yes, one other thing, the hotel custody records.  
15 We have made a request for hotel custody records. They have  
16 logs that list the indictment number, the name of the  
17 defendant, the name of the witness, the reason why the person  
18 was kept at the hotel, whether the person was kept at the  
19 hotel as a mere witness for protective custody under material  
20 witness order.

21 THE COURT: And you need those?

22 MR. RUDIN: Yes. We have one page that includes the  
23 dates around when Angel Santos was kept as a material witness  
24 in a hotel.

25 THE COURT: And you're just looking for the Collins

1 case or you're looking for something --

2 MR. RUDIN: Well no, we were looking more broadly,  
3 but Your Honor made a preliminary ruling that at least for now  
4 they needed to disclose statistical information about during a  
5 five-year period how many times witnesses who were the subject  
6 of material witness orders were held in hotels, and that has  
7 not been responded to. And then we were going to address  
8 whether or not to seek any additional discovery after we  
9 received that response.

10 MR. LARKIN: I believe --

11 THE COURT: Go ahead.

12 MR. LARKIN: I'm sorry. I believe that we disclosed  
13 numbers, a number of witnesses -- okay, we disclosed a number  
14 of witnesses I believe for whom material witness warrants were  
15 obtained, and then there was a followup. There was a -- Your  
16 Honor had suggested that we turn over -- again, this is the  
17 problem of trying to keep track of so many different balls in  
18 the air, Your Honor, so I appreciate the Court's indulgence  
19 and the Court's patience. I believe the Court had suggested,  
20 had directed us to turn over or to reveal and disclose the  
21 number of those individuals, the subset that were kept in  
22 hotels. Am I remembering that consistent with your  
23 recollection, counsel? I'm sorry.

24 MR. RUDIN: I've checked with everyone at this  
25 table. I don't think we received it as material witnesses. I



1 think you may have supplied something as to some other  
2 category, not material witnesses. But if I'm wrong and you've  
3 complied, then all you need to do is the second part which you  
4 just described.

5 THE COURT: Okay.

6 MR. LARKIN: I think the concern --

7 THE COURT: Can I just stop you both for a second?

8 MR. LARKIN: Yes. I apologize.

9 THE COURT: I think the burden is on the plaintiff  
10 at this point to say whether or not you did receive that  
11 information.

12 MR. RUDIN: I don't believe we have, Your Honor. I  
13 don't recall receiving it. No one else at this table recalls  
14 receiving it. We've all been reviewing discovery.

15 MR. LARKIN: I know we sent out -- a number of  
16 individuals who were subject to material witness orders was  
17 provided.

18 THE COURT: By email? By letter?

19 MR. LARKIN: It was a document that our client  
20 actually created after reviewing its own records and we did  
21 supply -- I can supply again or I can supply the Bates number.  
22 I'm happy to do that, Your Honor, if need be.

23 THE COURT: Just supply them again. You know, it'll  
24 be a lot easier.

25 MR. LARKIN: Yes, yes.

1 THE COURT: Thank you.

2 MR. LARKIN: But there has been a concern with  
3 regards to the specifics of the material witnesses only  
4 because these individuals are in protective custody for their  
5 own protection. And so I don't know that we've honed it down  
6 enough where we're at the point where counsel wants names or  
7 dates or locations for specific witnesses. So I guess --

8 THE COURT: Can you come up with a protocol? I'm  
9 sorry to interrupt you, but can you come up with a protocol,  
10 the three of you, for how you want to deal with that?

11 MR. LARKIN: I think so. I think we need to do  
12 that. I'll confer with --

13 THE COURT: Yes. You have enough private information  
14 here, you know, in the case that's sensitive that I think you  
15 can just come up with a general protective order.

16 MR. RUDIN: All right. Your Honor, can we have a  
17 deadline for the conferral? Every other time we've had a  
18 discussion of the conferral I have not been able to bring  
19 about the conferral with the one exception of March 22<sup>nd</sup> and  
20 23<sup>rd</sup> we conferred and that's the last time I've been able to  
21 arrange a conferral so --

22 THE COURT: Okay. When --

23 MR. LARKIN: I guess we share the frustration, Your  
24 Honor. So what I will do is supply the Bates number of that  
25 document by the end of this week and then next week by next

1 Friday, the 21<sup>st</sup> of June. Am I correct? June 14<sup>th</sup>, this  
2 Friday, June 21<sup>st</sup> we'll have our conferral.

3 THE COURT: So are you going to provide the Bates  
4 number or the actual document?

5 MR. RUDIN: Either one.

6 MR. LARKIN: I'll supply them with another copy of  
7 the document. Sure. No problem.

8 THE COURT: Okay. Easier.

9 MR. RUDIN: And Your Honor, there's statistical  
10 information which doesn't involve a privacy concern. Are we  
11 going to receive that? About how many of those witnesses  
12 ended up in hotels. That was the second part of Your Honor's  
13 order.

14 MR. LARKIN: The first part that the plaintiff says  
15 he didn't get is the document showing the number of  
16 individuals that were subject to material witness orders. It  
17 was not very high. It was lower than -- it was something like  
18 18. It was something like literally four one year, it was ten  
19 another year, 12 another year. It was not a lot of --

20 THE COURT: That's why we get the sample.

21 MR. LARKIN: Exactly.

22 MR. RUDIN: Mr. Larkin is mistaken because I  
23 received a document that on one page of a log had at least  
24 seven or eight material witness orders in a one or two week  
25 period. That's the paper that they've supplied with Angel

1 Santos. So I think Mr. Larkin must be referring to --

2 MR. LARKIN: By 1995 the number was higher. There  
3 were about 40 material witness orders in 1995. Prior to that  
4 time the numbers appear to be lower. And so that's the  
5 information that I got. I'll supply it and we'll go from  
6 there.

7 THE COURT: This is why you're conferring on the  
8 21<sup>st</sup>.

9 MR. LARKIN: Yes, Your Honor.

10 THE COURT: All right. Are we done with the  
11 documents?

12 MR. RUDIN: Except for the emails and --

13 THE COURT: Right. And the disciplinary records.

14 MR. RUDIN: Well, one other thing. The privileged  
15 documents that Your Honor ruled on before, we had a further  
16 conversation. Following Your Honor's suggestion, I sent a  
17 detailed letter to Mr. Larkin asking for more information  
18 about some of the documents that have been withheld on  
19 privilege grounds. Some of the ones that we discussed briefly  
20 by telephone and then additional documents, just one example  
21 that comes to mind, there were 350 pages of notes apparently  
22 from the trial and it seemed to me that some of those notes,  
23 for example, what kinds of questions to ask Oliva, there's  
24 been a lot of controversy with the Brooklyn DA's Office where  
25 the practice was in the 1990s to take notes in form of

1 questions so that there wouldn't be a Rosario obligation. And  
2 ultimately the Appellate Division ruled that in some cases  
3 that's a skirting of the Rosario obligation and have to turn  
4 over the questions. And that ruling came in the mid 1990s.  
5 So it's possible here that they interviewed a witness like  
6 Oliva or a witness like Santos and took notes in the form of  
7 questions and then didn't turn them over as Rosario. And  
8 those notes might contain Brady material.

9 THE COURT: So you're saying that what I thought  
10 were notes taken during the trial were in fact possibly  
11 interview notes?

12 MR. RUDIN: Yes. And I --

13 THE COURT: So how would I know that? Or how could  
14 one know that from looking at the records?

15 MR. RUDIN: Well, because we asked defense counsel  
16 for more information about what those 350 pages are and we  
17 wrote a very specific letter with specific questions and we  
18 didn't receive a response. That was one of the things that we  
19 were supposed to confer about and we were never able to  
20 confer. So I would just ask that defense counsel respond to  
21 my letter and that we confer. And then if we aren't able to  
22 work it out then we can bring it to Your Honor's attention for  
23 more torture of the Court.

24 MR. LARKIN: Yeah, I mean you know, we went through  
25 a detailed process where we submitted a significant amount of

1 material to the Court and the Court spent a lot of time  
2 looking at it closely. Plaintiff then decided to send us  
3 another four page single spaced letter complaining about every  
4 nit and every, you know, pencil mark on every piece of paper  
5 including, you know, identify the author of this, you know,  
6 PostIt that appears on Bates number 36221. You know, come on,  
7 it's just -- at some point it does become a bit cumbersome.  
8 Okay?

9 THE COURT: I understand you're frustrated, but --

10 MR. LARKIN: All I would ask is if we could have  
11 until a week from Friday, June 21<sup>st</sup>. I'll respond to Mr.  
12 Rudin, I'll respond directly to his letter to every matter  
13 that he's raised, and if he wants to bring further motion  
14 practice, I guess that's his right. But it seems to me that's  
15 going backward revisiting issues that the Court has already  
16 looked at, is going backward, and is not really productive.  
17 But if counsel wants to do it, that's the way I would request  
18 the opportunity to do it that way.

19 THE COURT: Here's my ruling on that. You'll meet  
20 and confer on that on the 21<sup>st</sup>. You'll send him a letter  
21 before the 21<sup>st</sup>. And then to the extent that there's a  
22 legitimate dispute that ought to be brought to the Court, I'll  
23 entertain it understanding that it would only be on the basis  
24 of established law on motions for reconsideration which will  
25 be that there's something that's brought to the Court's

1 attention that the Court didn't understand before. So for  
2 example, if the Court -- if I thought that these were trial  
3 notes and in fact they were notes of witnesses, that would be  
4 something that I would have understood. So that's the kind of  
5 thing you can come back and ask about. Otherwise, the time to  
6 reconsider is past.

7 MR. RUDIN: Yes, Your Honor.

8 MR. LARKIN: Thank you, Your Honor.

9 MR. RUDIN: All right. So then turning to the  
10 emails?

11 THE COURT: Yes.

12 MR. RUDIN: So we have tried for a number of months  
13 now to arrange a meet and confer with the IT person from the  
14 DA's Office so that we can understand what the problems are  
15 and whether or not there's a way consistent with our real  
16 interest here to narrow down the request. We need to have an  
17 understanding of what part of our request presents a problem  
18 in terms of the number of hours that are necessary by an  
19 expert to retrieve the emails. I assume, for example, that  
20 emails that we're seeking from 2006 that maybe have not been  
21 saved in the same manner as emails from 2010 may be more  
22 difficult. If someone would explain to us what the practical  
23 problems are. We have an interest in moving the case forward  
24 so we'll try to be as reasonable as we can but we haven't been  
25 able to have that conferral.

1 THE COURT: Okay. And your letter and I think our  
2 mutual discussions at the last conference suggest that your IT  
3 people should all just get together and try to figure this  
4 out. Now, if that's unrealistic given -- if it's unrealistic  
5 for some reason, let me know.

6 MR. RUDIN: We don't have an IT person.

7 MR. LARKIN: I guess the costs and the burden, Your  
8 Honor, of just looking for one person's emails going back to  
9 2006 was vast. I was told that it would take hundreds of  
10 hours of restore sessions to get the old data back from that  
11 time period. Now, if I'm hearing that a limitation, say  
12 starting with 2010, which is when the habeas proceedings  
13 heated up, I think that would be much more manageable and  
14 doable. And I can -- I mean that, it seems to me given the  
15 time left for discovery, is a realistic reasonable  
16 conversation. If we're talking about emails for eight or nine  
17 individuals that go all the way back to 2006 and 7, that's  
18 just going to be an extremely costly time consuming  
19 undertaking based on what I've learned from the client. But  
20 2010 is a significant difference in terms of the cutoff.

21 THE COURT: And you've spoken to the IT people?

22 MR. LARKIN: I've spoken to my contacts at the  
23 client who have had the detailed discussions with the IT  
24 people and I'm confident that I've got good information  
25 because I got a lot of specifics on that, Your Honor. So if



1 2010 is the cutoff, we could probably cut through that a lot  
2 quicker.

3 MR. RUDIN: Well, then I guess they should have done  
4 2010 by now and it wouldn't have been that difficult and we  
5 could be struggling with 2006, but we don't even have most of  
6 2010.

7 MR. LARKIN: Well, that's not really fair.

8 THE COURT: Okay. Gentlemen --

9 MR. LARKIN: Sorry.

10 THE COURT: The principle that's involved here is a  
11 burden benefit analysis. All right? And so that's what the  
12 Court is -- the Court has to look at that. So --

13 MR. RUDIN: We haven't been able to meet with their  
14 person. I don't know when -- this is all third hand.

15 THE COURT: Okay.

16 MR. RUDIN: Mr. Larkin's understanding from the DA's  
17 Office, which also represented that there were no emails in  
18 the CBS "Brooklyn DA" series involving Vecchione and there  
19 were.

20 MR. LARKIN: Come on. We never said that there were  
21 no emails. That's silly.

22 THE COURT: Okay. So gentlemen, okay, let's --

23 MR. LARKIN: My goodness.

24 THE COURT: Let's just keep it --

25 MR. LARKIN: I just can't --

1 THE COURT: Mr. Larkin --

2 MR. RUDIN: They did make the representation that --

3 MR. LARKIN: False statement. We never said --

4 THE COURT: Mr. Larkin --

5 MR. LARKIN: -- that there were no emails.

6 THE COURT: -- Mr. Larkin --

7 MR. LARKIN: I'm sorry. I just can't allow  
8 misrepresentation.

9 THE COURT: Well, you say you're sorry but then you  
10 keep talking. I do the same thing but -- okay.

11 MR. LARKIN: You're the judge.

12 THE COURT: Here's what I'd like you to do. All  
13 right. Could you let Mr. Rudin speak to your IT person with  
14 you on the phone and just let him assess what the burden  
15 benefit analysis would be? Because ultimately that's the  
16 decision I'm going to have to make. I want Mr. Rudin to  
17 understand the burden or benefit and then both of you can  
18 argue from the same page. That's what I need.

19 MR. LARKIN: Can we have until the 28<sup>th</sup> of June to  
20 arrange that? Because I'll reach out to the client. I'll  
21 find a convenient date and time when we can all get on the  
22 phone and confer and we'll set up a conference call, Your  
23 Honor.

24 MR. RUDIN: That pushes us back two weeks before we  
25 even begin to have the processing of the emails. I'm just

1 concerned with the overall schedule that then they're going to  
2 say they need a lot of time to actually retrieve the emails  
3 and everything could be thrown out of whack. So why can't we  
4 have that conferral sooner. We're just talking about a  
5 telephone conferral.

6 MR. LARKIN: Well, we have to prepare ADA Vecchione.  
7 He's got to be deposed sometime before June 25<sup>th</sup>. If counsel  
8 wants to move the deposition -- I mean on top of that we've  
9 got the personnel files to look at.

10 THE COURT: Right.

11 MR. LARKIN: We've got all the other documents to  
12 produce. We've got our own discovery to do in the case.

13 THE COURT: Right.

14 MR. LARKIN: You know, something has to give at some  
15 point. I've only got two hands and Ms. Krasnow has got two  
16 hands I think. One and two. So --

17 THE COURT: So that's why we're doing the  
18 prioritizing. That's why I wanted to go through everything.  
19 We've got all the dates and the numbers here. So what we need  
20 to do here is figure out what the priority is. June 28<sup>th</sup> seems  
21 to be reasonable given all the things that the defendants have  
22 to do in this case.

23 MR. LARKIN: I'll accept that, Your Honor. I don't  
24 want to belabor it. If that's --

25 THE COURT: Yes. You know, and part of the problem

1 is Monell things are very difficult and involves a huge amount  
2 of discovery. It's a burden on plaintiff, it's a burden on  
3 defendants, it's a burden on the Court, but it's important.  
4 So we want to do it right and we'll just continue to  
5 prioritize it.

6 MR. RUDIN: Your Honor --

7 THE COURT: Hold on.

8 MR. RUDIN: Your Honor --

9 THE COURT: Is Mr. Retco [Ph.] here?

10 THE CLERK: No.

11 THE COURT: Mr. Retco has nothing to do with this  
12 case.

13 MR. LARKIN: Lucky him.

14 THE COURT: Come on in. We'll take you back to the  
15 jury room. Rachel will be back in a couple of minutes.

16 MR. RUDIN: Your Honor, that brings us to the issue  
17 of --

18 MR. LARKIN: Your Honor, I'm sorry, my co-counsel  
19 just reminded me that we've got a couple of deadlines of June  
20 21<sup>st</sup> and we also have ADA Vecchione's deposition to be done  
21 either by the 21<sup>st</sup>, on the 21<sup>st</sup>, or on the 24<sup>th</sup> of June. It  
22 does not seem possible. Really, I know Your Honor just ruled  
23 on this but --

24 THE COURT: Just tell me what you'd like.

25 MR. LARKIN: Would it be possible to make that

1 deposition sometime in the dates that we proposed, either July  
2 30<sup>th</sup> or July 31<sup>st</sup>, or August 6<sup>th</sup> or 7<sup>th</sup> so that we can -- and it  
3 may make sense particularly in light of the emails that will  
4 be produced. I expect that some additional emails will be  
5 produced and some of them may relate to ADA Vecchione's  
6 deposition. So --

7 THE COURT: It's a tradeoff for you, Mr. Rudin. You  
8 have to decide whether or not the emails are important enough  
9 that you'd like to have them all before you have the Vecchione  
10 deposition.

11 MR. RUDIN: I'd like Mr. Vecchione's deposition.  
12 That's a priority.

13 THE COURT: Okay. So we'll push back the emails a  
14 little bit.

15 MR. LARKIN: All right. So then I think also some  
16 of the other conferrals that we have to have about -- I'll let  
17 my co-counsel address it. She's got the --

18 THE COURT: I mean we've got all the meet and  
19 confers on the 21<sup>st</sup> and we have the Vecchione deposition.

20 MS. KRASNOW: All the meet and confers are on the  
21 21<sup>st</sup> plus responding to the letter with other privileged  
22 documents. And then we're taking a deposition early the next  
23 week. So it's just -- I don't see how we can get all that  
24 done.

25 THE COURT: So what do you propose? That's why

1 we're doing this in the list.

2 MS. KRASNOW: To move either Mr. Vecchione's  
3 deposition or to move the conferrals back on those topics.

4 THE COURT: The conferral and the Vecchione  
5 deposition are pretty much on the same date, so we need to  
6 move -- I think we may need to move the conferral if you don't  
7 want to move the Vecchione deposition.

8 MR. RUDIN: So let's move the conferrals to a date  
9 soon after the Vecchione deposition.

10 THE COURT: Let's make it a reasonable time for the  
11 defense.

12 MR. RUDIN: Let's make it -- I would suggest, Your  
13 Honor -- yeah, that's not going to be enough time. Maybe July  
14 3<sup>rd</sup>, on or before July 3<sup>rd</sup>. I mean you've got the three-day  
15 weekend there. I think actually the first or second week in  
16 July makes a lot more sense for all that stuff because we're  
17 going to need to confer with our client and find out what they  
18 have and where it is. And with respect to emails, it's going  
19 to be somewhat involved. So maybe the week of July --

20 THE COURT: Let's start with July 3<sup>rd</sup>. How does July  
21 3<sup>rd</sup> work for you?

22 MR. LARKIN: Not very well. I have a brief due in  
23 the Second Circuit on July 5<sup>th</sup> in a case where they just  
24 granted in bank review.

25 THE COURT: Okay. So when do you want to do it?

1 MR. RUDIN: We're talking about a telephone call. I  
2 don't understand why we can't do it the week before.

3 MR. LARKIN: Well, we're pushing off all this  
4 discovery.

5 THE COURT: If the telephone call goes the way this  
6 conference goes --

7 MR. LARKIN: It's the week of -- it would be the  
8 week of July 8<sup>th</sup>, Your Honor. Maybe by Friday the 12<sup>th</sup>? That's  
9 only 30 days from today to work out a significant number of  
10 discovery issues. I mean if we can do it sooner, we'll be  
11 happy to do it sooner. But if counsel wants ADA Vecchione,  
12 that's --

13 THE COURT: Well, that's a trade off.

14 MR. RUDIN: That's, as Your Honor said, apples and  
15 oranges. I mean if you're carrying one witness to testify,  
16 that should mean that they can't find out from their client  
17 what documents they have and then have a telephone  
18 conversation about how they should be provided and under what  
19 protections of the rights of innocent third party witnesses --  
20 whereas to the emails, why we can't have a telephone  
21 conversation with their IT person that we've been trying to  
22 set up for three months, I don't understand why --

23 MR. LARKIN: I mean, you know, I can't --

24 THE COURT: Okay. But let's just talk about the IT  
25 person.

1 MR. LARKIN: Yes, Your Honor.

2 THE COURT: I think we have a better chance of  
3 getting the IT person the week before the Fourth of July. So  
4 if we can do that --

5 MR. RUDIN: By the 28<sup>th</sup>?

6 THE COURT: Yes.

7 MR. RUDIN: Okay.

8 MR. LARKIN: I mean that's probably -- if we isolate  
9 that one piece and set it up for sometime prior to June 28<sup>th</sup> --

10 THE COURT: Okay. So we'll move on?

11 MR. RUDIN: Yes, Your Honor.

12 MR. LARKIN: But I think, Your Honor, the conferral  
13 about the other issues, the other document issues are still --  
14 I mean we still have personnel records to produce. We have  
15 all these logs that have been requested. And, you know, we  
16 aren't going to be able -- it just seems it's going to be  
17 extremely difficult for us to get all of that done --

18 THE COURT: You have by the 28<sup>th</sup>.

19 MR. LARKIN: -- prior to the 21<sup>st</sup>.

20 THE COURT: 28<sup>th</sup>. [Inaudible] the 28<sup>th</sup>. The Marshal  
21 -- all the case [inaudible] are the 12<sup>th</sup> of July. The other  
22 DIs are the 15<sup>th</sup> of July. Now, the hotel custody records,  
23 well, that's [inaudible] just going to --

24 MR. LARKIN: We're going to have to confer and speak  
25 about that.



1 THE COURT: That's not going to take very long.  
2 That's the [inaudible]. So I think we're okay. If you want  
3 to change the 21<sup>st</sup> to the 28<sup>th</sup> for the meet and confer, we can  
4 do that. That work?

5 MR. LARKIN: I think we'll have to.

6 THE COURT: All right. Mr. Rudin, so it's not the  
7 3<sup>rd</sup>, it's the 28<sup>th</sup>. That'll take the burden off you as well.

8 MR. RUDIN: Thank you. All right. So now there's a  
9 sealing issue and then there's the question of the timing and  
10 the scope of Mr. Hynes' deposition.

11 THE COURT: Okay. Now, here's what we need to do.  
12 We need to take a short break because I have another case that  
13 I have to dial into. We're going to take a couple of minutes  
14 and then I'll be back?

15 MR. RUDIN: May we leave our material here on the  
16 table?

17 THE COURT: It's fine. Leave everything right  
18 there.

19 MR. RUDIN: Thank you, Your Honor.

20 THE COURT: Can you just turn the record off?

21 Thanks.

22 [Off the record.]

23 MR. RUDIN: Your Honor, are we back on the record?

24 THE COURT: We will be in one second.

25 THE CLERK: We're back.

1 THE COURT: We're back on the record.

2 MR. RUDIN: Your Honor, Ms. Rosenblatt reminded me  
3 that I forgot to bring up the CBS emails. There was a  
4 disagreement. I believe that Mr. Larkin is agreeable in  
5 principle to providing some of those emails. CBS had  
6 indicated when it made the limited disclosure that it made in  
7 the Abe George case that they were only disclosing emails that  
8 they, in their judgment, did not believe were protected by  
9 some sort of journalist privilege. So there appear to be  
10 additional emails that may involve Mr. Vecchione. I don't  
11 know if any of them also involve Jabbar Collins. But Mr.  
12 Larkin indicated in an email to me that he thought that the  
13 emails -- that there shouldn't be -- he did not want to make  
14 disclosure beyond I think it was February of 2013 and our  
15 position is that there should be no artificial cutoff, that  
16 the show has been in production for a number of months. And I  
17 understand from whatever what I've read in the news media and  
18 from a direct conversation with a producer who called me that  
19 they may very well go into the Jabbar Collins case. And I  
20 also understand that they're beginning to go into some of Mr.  
21 Vecchione's previous prosecutions and he continues to be the  
22 star of the show. And any emails that reflect his role,  
23 possibly any editorial influence or control that he may have,  
24 the district attorney's involvement, and the discussion of the  
25 Jabbar Collins case -- when I say the district attorney's

1 involvement I mean emails are relevant because Mr. Vecchione  
2 it seems to us is being held out as the face of the office and  
3 that's significant given what we intend to prove about Mr.  
4 Hynes' knowledge of alleged misconduct on Mr. Vecchione. So  
5 that's why we want the emails. And I don't see why I should  
6 be artificially limited to February.

7 MR. LARKIN: I guess the reason why I suggested that  
8 limit cutoff, Your Honor, is that my understanding is that  
9 emails after that only concern scheduling such as items such  
10 as when and where can we shoot the first episode and who's  
11 going to be available and when. There was nothing of  
12 substance. I think that the program, the relevance of the  
13 program, as I understand it, is that -- putting aside the  
14 Collins case for a moment, which has not been the subject of  
15 any of the episodes of the program, the plaintiff's theory  
16 will be that the district attorney continues to have  
17 confidence in ADA Vecchione and allows him to act as one of  
18 the senior players in the office on the program. And the  
19 program is public. It's aired, it's out there. We aren't  
20 going to dispute that, any of those facts. So these emails  
21 have tangential relevance to the extent that they don't  
22 concern the Collins case. If counsel wants all the emails  
23 that relate to the program, it seems to the extent that they  
24 mention the Collins case at all, there could be -- it seems to  
25 me that there is relevance there and that they should be

1 discoverable. But to the extent that they don't, they're not  
2 even discoverable here. They don't relate to anything that's  
3 material to this case it seems to me, and there is a burden  
4 searching for old email. So if the plaintiff wants all of the  
5 emails concerning a program, relating to the program that  
6 mention the Collins case, that's a fair discovery demand and  
7 we can incorporate the discussion with the IT person. We can  
8 incorporate that issue into that discussion. But to produce  
9 all the emails related to the entire program concerning things  
10 like where to have lunch or where a shoot should take place  
11 seems to be burdensome given the fact that there is a public  
12 program where ADA Vecchione appears.

13 THE COURT: Okay.

14 MR. LARKIN: And there's no question that the DA is  
15 -- that's done with the DA's approval. There's no question  
16 about that.

17 MR. RUDIN: Your Honor --

18 THE COURT: So let's just narrow down what's  
19 requested. No dispute over Collins without a date, so emails  
20 re Collins. The only other thing that I heard a request for  
21 was Vecchione.

22 MR. RUDIN: That's right. Any email that he's a  
23 party to or that mentions him. And the reason why that's  
24 important is I know Mr. Larkin previously has characterized  
25 the emails that we did get through the CBS litigation as not

1 significant because they're really about scheduling, but in  
2 fact, what they show is Mr. Vecchione and Jerry Schmetterer,  
3 who's the public relations person from the DA's Office, were  
4 the two people who conducted all the negotiations. And there  
5 was an email where they talked about selling the idea to the  
6 district attorney or getting his approval. And the emails  
7 show that Mr. Vecchione is there setting the whole thing up.  
8 He's the architect of it for the DA's Office. And I, you know  
9 --

10 THE COURT: Can't you just stipulate to that? I mean  
11 does anybody disagree about that?

12 MR. LARKIN: Well, the fact that ADA Vecchione is  
13 the architect of it? That's not true. I mean --

14 THE COURT: Okay. They disagree.

15 MR. LARKIN: The producer at CBS contacted the DA's  
16 press spokesman, somebody with whom she had a previous  
17 business relationship and suggested doing the program, and  
18 they agreed to do it. And there's no question that ADA  
19 Vecchione was involved to some extent in discussions with the  
20 district attorney, but counsel can depose ADA Vecchione and  
21 ask him those questions. If he wants to depose the spokesman  
22 on it, I don't really see what's to be gained from that. But  
23 emails concerning Vecchione and the program, the television  
24 program, aren't relevant to this case. The program is the  
25 program. It's public. It's aired. ADA Vecchione, he does a

1 voice over, he appears, a number of his cases are discussed.

2 We aren't going to dispute those facts. It's there.

3 MR. RUDIN: Your Honor, how much of a burden would  
4 it be to search for? These are current emails in the year  
5 2013 that involve Mr. Vecchione, or that he's a -- I'm even  
6 willing to limit it further, that he's a party to. To or from  
7 Mr. Vecchione. That's a very simple search and it won't take  
8 them very long.

9 THE COURT: To and from Mr. Vecchione and --

10 MR. RUDIN: And concerning the CBS program.

11 THE COURT: And CBS or concerning the CBS program?

12 MR. RUDIN: Concerning the CBS program, to or from -

13 -

14 THE COURT: Even internal?

15 MR. RUDIN: Yes, especially internal. But if there  
16 was some way to weed out emails that are truly unimportant and  
17 extraneous, then of course I'd want to do that. But the  
18 problem is that the side doing the weeding out has an interest  
19 in the litigation, so it seems to me that the most  
20 straightforward way to accomplish this is just have them  
21 provide all those emails. It can't possibly take very long to  
22 search current computer records for those emails.

23 MR. LARKIN: Your Honor, all this takes additional  
24 time. You know, we're talking about a significant number of  
25 depositions, a significant number of documents, a complicated

1 case --

2 THE COURT: I think I have a thought on this. Why  
3 not just between Mr. Vecchione and the district attorney?  
4 Because the idea is that the district attorney was the person  
5 who designated Mr. Vecchione, or had to be persuaded to use  
6 Mr. Vecchione and the question is whether or not despite what  
7 plaintiff believes is Mr. Vecchione's poor behavior or  
8 misconduct, the district attorney still wanted to use him as  
9 the face of the office. We can certainly start with that.

10 MR. LARKIN: So it would be, Your Honor, emails, any  
11 emails about the program concerning the Collins case, if they  
12 exist, and any emails between the district attorney, Charles  
13 Hynes, and Mike Vecchione concerning the program?

14 THE COURT: Right.

15 MR. RUDIN: Well then, Your Honor, I would also ask  
16 for any emails between Mr. Vecchione and CBS because Mr.  
17 Vecchione may have attempted to influence the content of the  
18 program and --

19 THE COURT: But why does that matter at this point  
20 whether he influenced the content?

21 MR. RUDIN: Because he's acting as the  
22 representative of the DA's Office influencing the content of  
23 the program. He's doing that on behalf of Mr. Hynes. I just  
24 think that's significant.

25 THE DEFENDANT: But how does it relate to the Monell

1 claim, to the pattern and practice?

2 MR. RUDIN: Because the idea that Mr. Hynes would  
3 allow Mr. Vecchione to do that when he's on notice about the  
4 misconduct that occurred in this and other cases is an  
5 indication to everyone in the office of his indifference to  
6 that misconduct. That's our theory. Obviously, Mr. Larkin  
7 would dispute it, but that's our theory. And it's not a  
8 burden to search for those emails. It's a very simple word  
9 search.

10 MR. LARKIN: Of course it's a burden, Your Honor. I  
11 mean first of all, the suggestion that anyone at the DA's  
12 Office influenced the content of the program is not correct.  
13 CBS doesn't allow anybody to exercise editorial --

14 THE COURT: Let me just cut you off for a second.

15 MR. LARKIN: I'm sorry.

16 THE COURT: Right now you can have the emails  
17 between Mr. Vecchione and the district attorney. You can  
18 depose Mr. Vecchione about what he wanted to do with CBS. And  
19 if you find something there that would require followup  
20 through emails or whatever else, then you can pursue that.

21 MR. RUDIN: Right. May I --

22 THE COURT: But I need to have a demonstration of  
23 relevance.

24 MR. RUDIN: May I do that part of the questioning at  
25 the first deposition or would you prefer that I wait for the



1 second part on Vecchione?

2 THE COURT: Does it matter? It really has to do  
3 with your preparation.

4 MR. LARKIN: We have no objection to questions about  
5 the program at the first deposition.

6 THE COURT: The first deposition. Okay.

7 MR. RUDIN: Okay. That's fine.

8 THE COURT: Great.

9 MR. RUDIN: All right. So --

10 THE COURT: Are we done with emails?

11 MR. RUDIN: Yes, Your Honor.

12 THE COURT: Okay. So it would be --

13 MR. LARKIN: Can I raise one question, Your Honor?  
14 With regards to ADA Vecchione's deposition, if we're going to  
15 split it up, counsel gets one day of seven hours. If we're  
16 splitting it up, it seems to me the seven hour limitation  
17 should apply. And let's say it goes six hours the first day,  
18 and since counsel made the representation earlier that 90% of  
19 the deposition, 90% in counsel's statement concerns the  
20 Collins case, it seems to me you go the first day say six  
21 hours and that leaves an hour for whatever other questions are  
22 left. So it would appear to me that the seven hour limitation  
23 should apply.

24 THE COURT: Well, it's a presumptive limitation so  
25 unless there's good cause to go beyond it, but I'm not going

1 to tell Mr. Rudin how many hours he has to spend at the first  
2 deposition or the second. We all know how to add.

3 MR. LARKIN: Okay. Fair enough.

4 MR. RUDIN: Your Honor, given his role, it may very  
5 well be that I'll make an application for more time but it's  
6 hard to know whether that'll be necessary until I do the first  
7 day. And I will certainly, with the Monell part of it,  
8 provide notice to the other side of the cases I want to  
9 question him about and make sure that they have the documents  
10 as Mr. Larkin as been requesting so that we can save time in  
11 reviewing documents during the deposition.

12 THE COURT: And also, if you've taken other  
13 depositions in the meantime you may not need Mr. Vecchione on  
14 some of these issues.

15 MR. RUDIN: That's possible.

16 THE COURT: Okay. Next?

17 MR. RUDIN: All right. So we're up to I think the  
18 sealing issue. There are -- first, preliminarily, there are  
19 some emails that the defense counsel has that they declined to  
20 provide unless we, immediately prior to the Monique Ferrell  
21 deposition unless we agree for them to be sealed, and I think  
22 that there's a privilege log that was prepared in connection  
23 with those emails that we haven't seen because the defense  
24 position was we should agree that the privilege log should be  
25 sealed. So we --

1 MR. LARKIN: We're going to withdraw that. I'm  
2 sorry to interrupt. Excuse. We're going to withdraw our  
3 request for sealing of those particular matters, Your Honor.

4 THE COURT: Okay.

5 MR. LARKIN: Excuse me. I'm sorry. We're going to  
6 produce the emails and we're going to produce the privilege  
7 log. There are some emails as to which we are going to  
8 litigate the, excuse me, I'm sorry, the work product --

9 THE COURT: Do you need some water? There might be  
10 some there.

11 MR. RUDIN: No, I'm okay. Throat's getting dry from  
12 all the talking here. Forgive me, Judge.

13 THE COURT: Just keep your powder dry.

14 MR. LARKIN: No powder. No powder on this side.  
15 There are going to be some emails that we think are pretty  
16 much core work product or deliberative process and I expect  
17 that counsel will ask that we submit them in camera. So we'll  
18 serve the log, we'll serve the emails on plaintiff probably  
19 tomorrow and we can go from there. But we're not insisting on  
20 sealing for any of that material.

21 THE COURT: Okay. So just for the record and to be  
22 sure I know what you're talking about, we're talking about Mr.  
23 Rudin's letter of June 4<sup>th</sup>, Page 3, the new sealing dispute?  
24 Is that what we're talking about? The deposition of Monique  
25 Ferrell? Is that --

1           MR. LARKIN: We have not yet seen the transcript for  
2 the Monique Ferrell deposition, Your Honor, but I'm inclined  
3 to withdraw that designation --

4           THE COURT: Okay.

5           MR. LARKIN: -- with respect to that transcript.

6           THE COURT: So that's off?

7           MR. LARKIN: Yes. I would like to just see the  
8 transcript but I'm pretty sure that we're going to withdraw  
9 any request to have that material treated as under seal.

10          THE COURT: Are there any other sealing issues that  
11 we need to address other than the question of access, you  
12 know, to the Hynes' deposition?

13          MR. RUDIN: Well, there's the principle I guess, or  
14 the mode of procedure as to whether or not the defense  
15 believes that questioning of witnesses or questioning of Mr.  
16 Hynes concerning his involvement and his communications about  
17 the Jabbar Collins case should be sealed. I don't know if Mr.  
18 Larkin is -- whether his view right now is to withdraw that or  
19 if he's just doing it as to Ms. Ferrell.

20          MR. LARKIN: I'm not sure, Your Honor. It may  
21 depend on what the scope of DA Hynes' deposition is.

22          THE COURT: Okay.

23          MR. LARKIN: And we need to I think address that  
24 first.

25          THE COURT: All right. So let's address that.

1 MR. RUDIN: All right. So Your Honor, there are a  
2 number of aspects that -- a number of issues we would like to  
3 depose Mr. Hynes about and I have submitted a very lengthy  
4 letter --

5 THE COURT: Yes, you have.

6 MR. RUDIN: -- which is one of many. And I don't  
7 know how much Your Honor would like me to get into that now.

8 THE COURT: Well, is there anything you agree on?

9 MR. RUDIN: Well, Mr. Larkin will speak to this. It  
10 seems to me that from the defendant's letter they were not  
11 disputing that aside from the Monell issue and Mr. Hynes'  
12 knowledge or role with respect to a number of practices,  
13 customs and practices that we're alleging, that aside from  
14 that they don't object to his deposition. At least there was  
15 no argument in their letter objecting to his deposition about,  
16 for example, his knowledge of the Jabbar Collins case, his  
17 involvement in the Jabbar Collins case, his relationship with  
18 Mr. Vecchione. I didn't see any objection. So, but Mr.  
19 Larkin I'm sure will speak for himself.

20 MR. LARKIN: Just to be clear, Your Honor, that's  
21 not quite accurate. Our view is that before you even get to  
22 a discussion about the elected official's deposition you need  
23 to depose others who have knowledge about the issues as to  
24 which there is collective knowledge. And it seems to me that  
25 every area that the plaintiff wants to get into --

1 THE COURT: Excuse me. We'll just stop for one  
2 second.

3 [Pause in proceedings.]

4 THE COURT: Okay. Go ahead. Sorry.

5 MR. LARKIN: As to an area, Your Honor, where  
6 there's shared knowledge, what the cases typically say is you  
7 take depositions of others who have that knowledge first.  
8 Now, there was a letter setting forth the general areas that  
9 plaintiff wanted to explore with the district attorney. When  
10 we fleshed out a little bit more and thought it through a  
11 little bit more, I mean really what you're left with here is  
12 you have general policies and practices which clearly other  
13 witnesses can testify about because policies and practices are  
14 arrived at with the DA's approval clearly, but with the input  
15 and the involvement of senior staff. It seems to me that's  
16 clear. So as to general policies and practices, other senior  
17 officials can provide the information.

18 And with respect to specific cases, we're going back  
19 now 25 and 30 years. And so any witness, whether it's  
20 District Attorney Hynes or it's someone who's testifying in  
21 his place on behalf of the office, any witness is going to  
22 have to go back, look through files, look at decisions and  
23 figure out why no discipline was imposed for instance in a  
24 particular case involving a Brady violation. And that's true  
25 for any witness. And so what the cases say is not only do you

1 typically go to the senior people first before you get the  
2 elected official, but the deposition has to be done in such a  
3 way so that it does not interfere with the elected official  
4 duties. And if we take an elected official and ask that  
5 person to set aside a full week so that he can sit down and  
6 review old files to sort of recreate thought processes as to  
7 why, for instance, discipline was not imposed, you know,  
8 following a 1996 Brady decision from the Second Department,  
9 any witness it seems to me can do that. And the cases  
10 strongly suggest that other witnesses ought to be deposed  
11 first in that kind of circumstance so that you minimize the  
12 inconvenience of the elected official.

13           And once you've exhausted those areas and the  
14 testimony as the record is being created, you know, it may be  
15 that there are areas left that only the district attorney can  
16 testify about and he has to appear to testify about those  
17 areas. But we aren't there yet because we haven't really  
18 explored, you know, we just haven't gotten that far.  
19 Plaintiff it seems wants to take the DA's deposition first  
20 before taking anybody else's and that's not the way the cases  
21 say you should proceed. So I think it's premature to  
22 determine whether we object to questions in any specific area  
23 being posed to DA Hynes at a deposition. We need to exhaust  
24 the other opportunities first and then see what areas are left  
25 and whether or not it's necessary for the district attorney to

1 appear. That would be our position, Your Honor, in a long-  
2 winded way. Forgive me.

3 MR. RUDIN: Your Honor asked whether or not we had  
4 any areas of agreement and I gather from Mr. Larkin's answer  
5 is that we don't because he seems to be saying that we have to  
6 depose other people who know, for example, what was discussed  
7 in Mr. Hynes' presence about the Jabbar Collins case. We  
8 can't ask Mr. Hynes what was discussed and what his thought  
9 process was? That doesn't make sense to me. I mean the issue  
10 in this case apart from whether or not there was misconduct  
11 that caused Mr. Collins to be damaged is whether or not the  
12 district attorney was deliberately indifferent to customs,  
13 practices, or policies that led to Mr. Collins being damaged  
14 and whether or not that can be established from among other  
15 things, how he acted or didn't act when he became aware of  
16 misconduct not only in the Collins case but in other cases.

17 Of course, Judge Block relied very heavily in his  
18 decision on the concept of condemnation or ratification. And  
19 here you have a situation where when we filed a 440 motion in  
20 2006 it was publically reported. We moved to disqualify the  
21 DA's Office because we took the position that Mr. Vecchione --  
22 no one in the DA's Office could objectively investigate Mr.  
23 Vecchione, yet the counsel for the Rackets Bureau ended up  
24 being assigned. She gave an explanation in her deposition  
25 based on her knowledge of who assigned her, but she doesn't



1 know what happened above her.

2           And so then when Judge Irizarry indicated that she  
3 would have to testify in the habeas, the other lawyer in the  
4 office who together with Mr. Vecchione handled a whole series  
5 of high profile cases, Kevin Richardson, is appointed. And we  
6 know from the emails that Mr. Richardson is reporting directly  
7 back to Ann [sic] Feinstein, who's the Chief Assistant  
8 District Attorney who's reporting directly back to Mr. Hynes  
9 that they're all meeting as a group, that this went on for  
10 weeks. Mr. Hynes appeared to be orchestrating or directing  
11 how the case was handled, and that specific allegations that  
12 had been made in the case about misconduct by Mr. Vecchione  
13 and other prosecutors were brought to Mr. Hynes' attention.  
14 But we don't have a lot of -- we don't have more substantive  
15 emails but we have enough to know that specific matters were  
16 brought to his attention and that he ultimately approved the  
17 resolution which was to dismiss all charges against a person  
18 who he continues to publically say was guilty of murder. And  
19 then there's an email where he expresses his state of mind  
20 about that and appears to be happy that Michael Vecchione will  
21 not have to testify. There won't be a hearing at least. Then  
22 the immediately through spokespeople distributes statements  
23 saying that nothing wrong was done by anyone in the office, at  
24 least anyone who's alive. And for the last three years has  
25 been making public statements about the case including a

1 statement to Michael Pell of the New York Times which was  
2 reported in a column that he wrote several months ago that Mr.  
3 Hynes continues to believe that Jabbar Collins is guilty.  
4 He's made all sorts of statements that I outlined in our  
5 letter and I included the attachments about there having been  
6 no misconduct in the Jabbar Collins case. He's made public  
7 statements that none of the other things that we have alleged,  
8 the other policies that we've alleged, including how witnesses  
9 were treated are true. I mean he has been -- even if there  
10 was some -- I mean it's just so clear that the case comes down  
11 to Charles Hynes as policy maker for the District Attorney's  
12 Office, whether or not he was deliberately indifferent over  
13 the last 20 some odd years to the kinds of misconduct that we  
14 believe was going on in the office and we intend to prove.  
15 And he's so deeply involved in the Jabbar Collins case that I  
16 don't see how anyone could possibly say that his deposition is  
17 not essential.

18           The question I suppose is the timing of it. And if  
19 we depose him and he acknowledges what we think he should  
20 acknowledge if he testifies truthfully, and we assume he'll  
21 testify truthfully, then we may not have to take other  
22 depositions from people who were present at meetings with him  
23 where the Collins case was discussed. But if it turns out  
24 that he does, then we may have to take other depositions.

25           But if we did as Mr. Larkin suggested and took other

1 depositions first, it would still leave the question of what  
2 Mr. Hynes was thinking. He has to -- if he, for example,  
3 became aware of certain allegations of misconduct in the  
4 Collins case such as there's an email reminding him that Angel  
5 Santos is the witness who was locked in jail for a week and  
6 was the subject of a material witness order and gave the  
7 testimony that was contradicted by the absence of his voice on  
8 a 911 tape. So if Mr. Hynes ultimately decides that Michael  
9 Vecchione or other prosecutors did nothing wrong, how did he  
10 reach that decision? What was his thought process? How does  
11 he justify it in light of the information that he had. And of  
12 course, we have to establish the information that he had.

13 But going back to these other cases, I submitted to  
14 the Court the testimony of Dino Amoroso, the chief counsel  
15 through 2005 who I understand is his chief counsel again.  
16 He's been sitting in on all the depositions indicating that  
17 Mr. Hynes would personally decide in each case where there was  
18 a court decision or a complaint about prosecutorial misconduct  
19 whether or not to authorize a preliminary investigation and  
20 then ultimately to decide whether there should be any  
21 discipline.

22 Mr. Hynes alone decided whether there should be any  
23 more -- what procedure should be used for disciplining ADAs,  
24 at least theoretically. He decided not to include --

25 MR. LARKIN: I'm sorry, I don't mean to interrupt.

1 I've got to -- I just got to cut some of this off. I mean --

2 MR. RUDIN: Your Honor, may I finish?

3 MR. LARKIN: -- we've heard this --

4 THE COURT: Hold on.

5 MR. LARKIN: Your Honor, we've heard all this  
6 before. None of it alters the analysis. Of course DA Hynes  
7 did not alone decide what to do in any case. He does so in  
8 consultation with others. And every --

9 THE COURT: Okay. Let me just interrupt you too.

10 MR. LARKIN: I'm sorry.

11 THE COURT: I think that I do understand both sides'  
12 papers. I was trying to give you both an opportunity just to  
13 speak because it's a matter of public importance and I thought  
14 that each one of you ought to have the opportunity to be heard  
15 because I think there is some interest in what's happening  
16 here.

17 Look, let me just tell you the Court's perspective,  
18 and I don't think I'm doing anything that's different from  
19 what the case law requires or what other courts have done.  
20 This is a Monell case. It's different from a lot of other  
21 cases where depositions are required. The plaintiff in a  
22 Monell case is entitled to depose a high ranking official or a  
23 municipal policy maker whether the individual has been either  
24 personally involved in creating or implementing the policy,  
25 practice, or procedure at issue. Or if there's a policy where

1 the policy maker was aware of a pattern of, or accusations of  
2 wrongdoing but failed to take action including investigations  
3 or discipline in response, or ratified his subordinate's  
4 unlawful decision and the basis for it.

5           Plaintiff alleges that this happened. Defendants  
6 contend that it didn't happen. The Court is not here to  
7 decide who's right or who's wrong with respect to those  
8 contentions but merely to make sure that discovery is  
9 permitted so that the issues can be fully aired and ultimately  
10 presented to the fact finder in a way that's important.

11           The policy maker is -- I mean it's black letter law  
12 that a policy maker is subject to a deposition in a civil suit  
13 regarding a policy that the policy maker has created. And I  
14 think what's happening here so far is we have two prongs. One  
15 is which policies the district attorney created himself and  
16 which policies he either ratified or was indifferent to.  
17 That's basically what the claims are about. And I think it's  
18 going to be very difficult for either side to proceed without  
19 a deposition of the district attorney to think clearly which  
20 policies he in fact created and which policies he was aware of  
21 and what decisions he was aware of or not.

22           So as far as I see it, the question here is one of  
23 timing rather than one of necessity. It's not unheard of in  
24 Monell cases to stage discovery. But at the same time, we  
25 want to it efficiently. So one of the reasons why all of us

1 spent as long as we have here today trying to come up with a  
2 schedule for the production of discovery is that much of that  
3 discovery may well be needed for the deposition of Mr. Hynes.  
4 And if we look at whether or not plaintiff is entitled to  
5 depose Mr. Hynes and to depose Mr. Hynes right away or not, in  
6 a vacuum that question really begs the issue which is when  
7 would be the most efficient time to do this?

8           So I have a list of 13 things that the City is going  
9 to be working on diligently for over the next month or six  
10 weeks. Some of those I assume would be relevant to the  
11 district attorney's deposition. And since I think it's  
12 inevitable that his deposition is going to have to be taken,  
13 the question is do you want, or does it make sense to take  
14 that deposition before you get the emails, for example, you  
15 resolve the email issue, before you've seen the field logs,  
16 before the hotel custody records? I mean ultimately I'm  
17 guessing that plaintiff and defendants will probably want the  
18 district attorney to -- want to have all that discovery out  
19 and available so that questions can be posed in a meaningful  
20 way. That's my guess just from sitting here. So it seems to  
21 me that taking his deposition next week or the week after  
22 probably wouldn't make any sense. And the question is does he  
23 have to take -- does the plaintiff have to take depositions of  
24 deputies and administrators before then? I think the answer  
25 is no. I don't think that you do have to do that because he

1 is ultimately the chief policy maker, he's ultimately the  
2 person who decides on discipline. And as I'm sure he would  
3 say, that he takes responsibility for what happens in his  
4 office.

5 MR. LARKIN: But Your Honor, can I ask one question?  
6 I'm sorry, did I --

7 THE COURT: Go ahead.

8 MR. LARKIN: -- did I interrupt? I apologize.

9 THE COURT: Go ahead.

10 MR. LARKIN: Your Honor, I was only going to ask to  
11 see how this would play out in practice you've got 50 some odd  
12 cases that were decided since the 1980s, 1990s up until  
13 recently. Is it going to be expected that the district  
14 attorney would have to be able to explain the decision making  
15 process with regards to each and every one of those cases and  
16 each and every one of the assistants involved? I mean if so,  
17 any witness it seems to me could do that. And shouldn't we  
18 have that deposition before DA Hynes is called upon to spend  
19 time away from his duties running that office, running his  
20 office?

21 THE COURT: Yes, I'm going to interrupt you too for  
22 a second.

23 MR. LARKIN: I'm sorry, Judge.

24 THE COURT: It seems to me that there are two kinds  
25 of -- two premises and two kinds of questioning that will be

1 asked here. If DA Hynes were a 30(b)(6) witness and he was  
2 responsible for explaining all the policies in the office,  
3 then he would have to do all his homework and understand  
4 everything that happened. What the other aspect is of the  
5 deposition is what did he know and what is his sense of his  
6 policies in the office? To what extent was he a Monell policy  
7 maker? To what extent did discipline take place or not take  
8 place because of what he -- of decisions he made. And I'm  
9 sure if you depose the President of the United States and ask  
10 the President of the United States, you know, what the  
11 Secretary of Homeland Security thought of a particular issue  
12 and the decision that was made, I'm sure the president would  
13 say, "You know, I might have known that at one time but I have  
14 a big job and I can't do everything." So I'm guessing that  
15 the district attorney's deposition may include statements of,  
16 "I don't know, I don't remember the answer to that, it's been  
17 a long time ago." Now again, that's up to you how to decide  
18 that. But there have been many depositions of commissioners  
19 where the commissioners say, "Well, I delegated this to  
20 someone else, but the ultimate policy was mine." Again, I  
21 don't want to go into great detail on this because I don't  
22 know how the District Attorney's Office was run, but he is not  
23 expected to be a 30(b)(6) witness where he's expected to know  
24 the answer to every single question. He is the chief policy  
25 maker and the district attorney and he will be deposed as to



1 his role in a Monell case. Isn't that what you're looking  
2 for, Mr. Rudin?

3 MR. RUDIN: Yes, Your Honor.

4 MR. LARKIN: If that's the case though, I mean those  
5 kinds of questions, Your Honor, I'm concerned that those kinds  
6 of questions, while it's understandable here in this courtroom  
7 that the district attorney isn't going to know, for instance,  
8 exactly, or be able to recall exactly what his thought process  
9 was about a 1992 case or a 1995 case, those kinds of questions  
10 and answers will be used to embarrass him by Mr. Rudin. And I  
11 believe that to be the case. I believe that that's what  
12 counsel intends to do with the deposition, and that's my  
13 concern about having the district attorney testify first  
14 whereas others who may testify beforehand can answer some of  
15 those questions and the district attorney can then defer to  
16 the answers given previously.

17 And so I think there's got to be some mechanism in  
18 place to protect the office and the individual from that kind  
19 of misuse of questions and answers. The Court's perfectly  
20 right that any commissioner or any agency head is likely to  
21 say in response to a question about a case that occurred 15 or  
22 20 years ago, "Gosh, I don't recall the specifics, I just  
23 don't recall them. Ultimately the decision was we did not  
24 discipline this particular assistant, we didn't fire him. But  
25 I just can't remember the specifics." That may be a perfectly

1 legitimate reasonable answer as Your Honor says, but that's --  
2 what counsel will do with that answer is try to embarrass him,  
3 and that's what I'm concerned about. I think it's a realistic  
4 concern in this case. And I just don't know how to protect  
5 against that.

6           One thought that I had is that others ought to be  
7 deposed first. Another thought is to keep the deposition  
8 confidential. But quite honestly, this is a case of public  
9 importance. I agree. It's a case of importance. We have  
10 someone who we believe shot and killed an innocent person who  
11 got a get out of jail free card, and I realize that that may  
12 sound -- counsel, plaintiff may not like the sound of that,  
13 but that's the way we see the case. And for that reason, this  
14 case is one of great public importance to us and to the  
15 district attorney as well.

16           And to ask an elected official who's been serving  
17 faithfully for 23 years to appear in these circumstances and  
18 to be expected to know the answers to those kinds of questions  
19 isn't fair. Perhaps the deposition could have been limited,  
20 Your Honor, to general policies and then maybe others can be  
21 deposed about specific cases. Maybe that's the best way to do  
22 it. I think the considerations that Your Honor is  
23 articulating are that the DA knows what policies he  
24 implemented and maybe the deposition ought to be limited to  
25 those general policies and he can testify about them.

1           THE COURT: Well, I don't think the case law would  
2 support that but --

3           MR. LARKIN: Your Honor, my --

4           THE COURT: -- the right of free speech and the  
5 right of the access for the public to know what's happening in  
6 an important public office, it's the First Amendment. It's  
7 the first thing that the founders put in the Bill of Rights.  
8 It's absolutely key.

9           MR. LARKIN: I want to make very clear we agree.

10          THE COURT: And you've emphasized that.

11          MR. LARKIN: We agree.

12          THE COURT: And just the way you and your client are  
13 entitled to express publically in a lawsuit and otherwise your  
14 opinion about the guilt or innocence of an individual, in this  
15 case I believe that the plaintiff is entitled to express his  
16 opinion about the propriety of the actions of the people who  
17 prosecuted him. That's just how the system works. And I  
18 don't think the Court is here to protect one side or the other  
19 from those comments. You know, I certainly wouldn't stop you  
20 from saying what you said, you know, about the district  
21 attorney's belief about the merits of the underlying criminal  
22 action, just as I wouldn't stop plaintiff's counsel from  
23 saying whatever he believes is appropriate about an elected  
24 official's conduct there. That's how our democracy works.

25          MR. LARKIN: Your Honor, shouldn't there be some --

1 I guess the concern I'm articulating is that as Your Honor  
2 said, no elected official can be expected to remember the  
3 details and the specifics of every decision that that official  
4 has made over the past --

5 THE COURT: He may remember many, and that's what  
6 counsel is entitled to probe. And it may well be that Mr.  
7 Hynes has a very good memory. I just think that public  
8 officials can explain well what they do and how their office  
9 works and they can defer before someone else's deposition or  
10 after someone else's deposition to that person's knowledge of  
11 the information and that either will -- and both sides can do  
12 with it as they wish. But I just don't think it's the Court's  
13 role to stifle speech in that way.

14 MR. LARKIN: I'm not suggesting that the Court  
15 stifle speech at all. Just, in fact, just the opposite, Your  
16 Honor. I'm asking for some protection here whether it be  
17 other witnesses testifying first about specifics, which is  
18 what all the cases contemplate. You know, one of the requests  
19 I've made is that the exhibits be identified in advance  
20 whether it be for DA Hynes or for other witnesses who may  
21 testify prior to DA Hynes' deposition. If the Court is going  
22 to permit the district attorney to be deposed first, then I  
23 really think there's an increased need to identify in advance  
24 the specific exhibits that the plaintiff intends to use so  
25 that there can be some meaningful preparation so that the

1 official can refresh his memory about decisions that may have  
2 been made a long time ago.

3 THE COURT: Well also, you know --

4 MR. LARKIN: And so maybe that's a reasonable  
5 request to make. Sorry.

6 THE COURT: Hold on one second. You know, Mr.  
7 Vecchione is going to be deposed first before him.

8 MR. LARKIN: Yes, it would appear that way.

9 THE COURT: And I would assume that many of the  
10 questions that he's asked will be similar to the kinds of  
11 questions to higher officials, no?

12 MR. LARKIN: Not at all, not at all. I think that  
13 ADA Vecchione --

14 THE COURT: Well, that's true, he's only going to be  
15 talking about Collins case.

16 MR. LARKIN: He's only going to be talking about the  
17 Collins case but even so, you know, ADA Vecchione was involved  
18 in a few other cases, the Marshal case and a couple of others  
19 whereas plaintiff has compiled a list of 50 cases that he  
20 claims are going to support a Monell claim.

21 THE COURT: No, that's fair enough. So Mr. Rudin,  
22 in terms of exhibits, do you have any problem disclosing the  
23 kinds of -- or the area of questioning for the district  
24 attorney?

25 MR. RUDIN: I have no problem disclosing the cases

1 that I'm going to be inquiring about. I've already disclosed  
2 a great deal of material about those cases, a lot more than  
3 I've gotten from the other side. If I'm going to be  
4 questioning Mr. Hynes about any particular document, I will  
5 make sure that that document with respect to those 50 cases or  
6 whatever has been disclosed. But I'm not required to identify  
7 the specific exhibits that I intend to question about and just  
8 telegraph in that way exactly how I'm going to conduct my  
9 deposition.

10 And also, Your Honor, I really need to respond. I  
11 mean for Mr. Larkin to accuse me of somehow embarrassing the  
12 district attorney merely because he can't remember something  
13 about a case that happened 20 years ago, and then to make the  
14 speech that he just made accusing Jabbar Collins of being a  
15 murderer when he knows that the District Attorney's Office  
16 dismissed the case without any retrial and Mr. Hynes said that  
17 was great news in an email, it's just outrageous. The  
18 District Attorney's Office admitted that there was a Brady  
19 violation that occurred, that a key witness had recanted his  
20 statement and it wasn't disclosed, and that as a result of  
21 that Jabbar Collins did not get a fair trial. That's what  
22 they stipulated to.

23 THE COURT: I think --

24 MR. RUDIN: And then, Your Honor --

25 THE COURT: Hold on just one second. I think you

1 both have exercised your free speech rights pretty well. I  
2 understand each of your respective positions on that and I  
3 just would like to focus on Mr. Hynes. I know you disagree  
4 and you stated it very clearly.

5 MR. LARKIN: Your Honor --

6 MR. RUDIN: But the point is that this case --

7 MR. LARKIN: -- the concern that we have --

8 MR. RUDIN: -- this case is about --

9 MR. LARKIN: -- Your Honor is that --

10 THE COURT: Hold on, hold on. Mr. Larkin, hold on.

11 MR. LARKIN: -- the exhibit, I thought Your Honor  
12 had --

13 THE COURT: Let me hear Mr. Rudin. He hadn't  
14 finished.

15 MR. LARKIN: I'm sorry.

16 MR. RUDIN: This case, as Mr. Larkin well knows and  
17 as I know the Court knows, is a civil rights case that  
18 involves whether or not under Section 1983 my client's  
19 constitutional rights were violated and he was harmed. The  
20 case is not about whether or not Mr. Collins did or did not  
21 commit the crime, although certainly he did not commit the  
22 crime. And if that is any way litigated, it'll probably be in  
23 relation to damages. It's not going to be in relation to what  
24 we're talking about today which is whether there were  
25 constitutional violations going on at the Brooklyn District

1 Attorney's Office and whether or not they led to Mr. Collins  
2 being convicted. So for Mr. Larkin to make that kind of  
3 statement knowing that there are members of the media here is  
4 so transparent, border on contemptible.

5 MR. LARKIN: I mean really --

6 THE COURT: All right. No, Mr. Larkin, I don't  
7 think we need to talk about this anymore, but I think what  
8 this demonstrates is that each side is making statements about  
9 the other side that they wish to make but that the other side  
10 wishes to prevent. And the Court's not here to say that the  
11 District Attorney's Office can't say what it wants to about  
12 Mr. Collins and that Mr. Rudin can't say what it wants to  
13 about the district attorney. That's how our democracy works  
14 and that's how it will continue to work at least in this  
15 courtroom.

16 MR. LARKIN: Your Honor, with regards to the  
17 exhibits, I do think there's a compelling need that the  
18 exhibits be identified otherwise you've got -- we have,  
19 rather, a 30 or a 40,000 page record that no public official  
20 can possibly review and understand as well as a lawyer who's  
21 been, you know, preparing for this case for the last 15 years  
22 can. It's just not possible. And so the rules do  
23 contemplate, the Advisory Committee notes do contemplate that  
24 in certain types of cases subject to the Court's discretion,  
25 identification of deposition exhibits is advantageous and it's



1 appropriate. And I think that out of respect for the district  
2 attorney's role, I think that to be fair to him, I just think  
3 that identification of the exhibits, this deposition is tailor  
4 made for that kind of procedure, Your Honor.

5 MR. RUDIN: Your Honor, I indicted I would provide  
6 notice of the cases that I'm going to ask Mr. Hynes about. I  
7 will make sure that we've provided full discovery of the  
8 materials that relate to those cases that I might possibly use  
9 to question him about. They'll have every opportunity to  
10 prepare Mr. Hynes and I don't think the rules require me to do  
11 anything more. I mean it's in my interest to have Mr. Hynes  
12 review any documents to save time at the deposition so that I  
13 can get through what I want to get through. So if I don't get  
14 through it, then I'm sure Mr. Larkin will take the position  
15 that we should be cut off and --

16 THE COURT: Now, with respect to the deposition and  
17 exhibits, certainly with respect to the Collins case there  
18 would be no need to pre-disclose those exhibits. I think what  
19 you're talking about is the burden of a large number of other  
20 cases that you would have to go through, figure out for  
21 yourselves how to prepare your witness, and then Mr. Hynes  
22 would have to prepare himself.

23 So the question then to Mr. Rudin is given that you  
24 don't have to disclose any of your exhibits for the Collins  
25 matter but only for the Monell claim, what do you propose to

1 ease the burden of preparation on a public official and on the  
2 Law Department at this point? I understand you will be  
3 designating the cases that you -- do you plan on using 50  
4 cases? Will there be a smaller number? That might help me  
5 figure it out. And then how would you propose easing the  
6 burden? Because that is something that I do want to take into  
7 consideration.

8 MR. RUDIN: I would think it's in my interest not to  
9 question him about 50 cases because I don't think I'd complete  
10 the process in the time allotted and some cases are more  
11 significant than other cases. And probably his answers about  
12 his thought process, about which kinds of cases are  
13 theoretically deserving of discipline and which are not will  
14 also cause me not to go into certain cases that fall on one  
15 side of the line. But it's a little difficult to know for  
16 sure before the deposition what I'm going to get into. I mean  
17 to be safe, of course, I could give them a great number of  
18 documents and then not use some of them, but that doesn't  
19 really help them.

20 THE COURT: Right.

21 MR. RUDIN: So I'll do the best I can consistent  
22 with the interests of my client. It's in my client's interest  
23 to save time at the deposition and not have Mr. Hynes sit  
24 there for 45 minutes reading old briefs and using up all the  
25 time.

1           THE COURT: Right. But you're looking at the use  
2 side. In other words, which documents you'll be using at the  
3 deposition. I'm looking at the preparation side as well  
4 because that's going to be something that will take a lot of  
5 time for the district attorney and for the Law Department. If  
6 you can figure out before the deposition, reasonably before  
7 the deposition that you will be focusing on a certain number  
8 of, you know, X number of cases or there are certain cases you  
9 will not be focusing on, that's what I'm looking at. I'm not  
10 looking at any other part of this deposition to deal with.  
11 But it doesn't seem unreasonable to ask that if you're going  
12 to, consistent with your interest and making sure that the  
13 district attorney is informed and gives informative answers,  
14 if you're going to ask questions about older cases, that he be  
15 given an opportunity to look at them, but not look at all of  
16 them.

17           MR. RUDIN: I understand what you're saying. I mean  
18 I think what Your Honor is saying is sincerely and not do a  
19 feint.

20           THE COURT: Right.

21           MR. RUDIN: To sincerely tell them about the cases  
22 I'm interested in, not tell them about cases I'm interested in  
23 when I really am not.

24           THE COURT: Right.

25           MR. RUDIN: And I understand that. I will do the

1 best I can. But to mark exhibits is another story. I think  
2 that's -- to tell them exactly which documents I'm going to  
3 use in the course of the examination, it's sort of obvious. I  
4 mean --

5 THE COURT: Well, I'm not asking you to do that at  
6 this point. What I'd really like you to do is say, "There are  
7 X number of cases that I'm going to focus on in the  
8 deposition. These are those cases. I've given you this  
9 information and what I'm focusing on is the kinds of  
10 information that I described in the questioning that I  
11 outlined in my letter." I mean that's pretty much what you're  
12 going to do, isn't it?

13 MR. RUDIN: Well, with respect to the case decisions  
14 that we contend provided notice and then there was a failure  
15 to discipline, I would provide notice of the specific cases  
16 and they have the court decisions. If I'm going to question  
17 him about any brief that was filed in his name, I'll provide  
18 notice of that. I'm not going to do that that much because I  
19 know the district attorney doesn't sit there writing briefs,  
20 but in some cases he may approve them or they're done with his  
21 knowledge. So it's a judgment call. About other policies and  
22 practices, let's say the hotel custody program, for example, I  
23 don't know at this point what I'd be prepared to tell them  
24 about but I understand in general it's in my interest to have  
25 him fully informed about the areas that we're going to be

1 questioning him about so that we don't take a lot of time with  
2 the deposition having him review documents and refresh his  
3 recollection and that kind of thing. I understand what you're  
4 saying and what Mr. Larkin is saying and I think it's in our  
5 interest to do that as much as we can. But on the other hand,  
6 there may be certain times when from a point of view of an  
7 examiner I don't want to tell him every exhibit I'm going to  
8 use. And to some extent it may depend upon what his answers  
9 are. But I don't think you need to mark all the exhibits but  
10 as I think about it, he's not a 30(b)(6) witness but he has  
11 the knowledge of a 30(b)(6) witness. In other words, he's not  
12 there to know everything about what happened in the  
13 department, but as a policy maker he knows some things but not  
14 other things. And in order to prepare him for his deposition  
15 properly, I think you do need to notify him of the categories  
16 of questions that you're going to ask which I think you've  
17 done in broad outlines in your letters.

18 MR. RUDIN: Yes.

19 THE COURT: But also of the cases that you're going  
20 to bring out and just enough so that they could have guidance  
21 in how to prepare him because I think that's what a public  
22 official deserves and I think that's what your adversaries  
23 deserve when he's expected to have the breadth of knowledge of  
24 a 30(b)(6) witness but isn't really one.

25 MR. LARKIN: And Your Honor, I think also if there

1 are any individual ADAs whose employment history, for  
2 instance, counsel might want to ask the district attorney  
3 about, I think it's fair that those individuals ought to be  
4 identified as well because otherwise we've got 50 individuals  
5 who conceivably could be the subject of questions. And so to  
6 identify them it seems to me it's the same principle as  
7 identifying the cases.

8 THE COURT: I think it is. And it's in your mutual  
9 interest to do that.

10 MR. RUDIN: Yes. I mean if I'm going to ask him  
11 about personnel records, for example, I will provide those in  
12 advance.

13 THE COURT: Okay. So you will -- right. And the  
14 same thing if there are ADAs. I think we all know the ADAs  
15 that you're planning on asking about, so I don't think it's a  
16 surprise, but I think you can certainly list the names of the  
17 ADAs that you'll be asking about.

18 MR. RUDIN: And I'm also wanting to take a  
19 deposition at the convenience of Mr. Hynes in terms of  
20 location.

21 MR. LARKIN: Wherever you want it to be held, that's  
22 fine.

23 THE COURT: Okay. Now in terms of the timing, what  
24 do you need before --

25 MR. LARKIN: There's one -- I'm sorry, Your Honor, I

1 think my co-counsel had one issue.

2 MS. KRASNOW: Just one other --

3 MR. LARKIN: -- she wants to raise.

4 MR. KRASNOW: -- issue about the exhibits. So we've  
5 already had a bunch of exhibits introduced in prior  
6 depositions and I would just ask that if there's going to be  
7 another exhibit from the Collins file which is 35,000 pages  
8 that hasn't already been used that that piece of paper be  
9 identified to us before DA Hynes' deposition.

10 THE COURT: Hard to imagine that there would be any  
11 other exhibit that hasn't been used, but I suppose it's  
12 possible.

13 MS. KRASNOW: I agree, but just because of the size  
14 of the file I would ask that if there's going to be another  
15 exhibit used that hasn't been used in a prior deposition from  
16 that DA's file that we be notified of the Bates number.

17 MR. RUDIN: I think it seems like 95% or more of the  
18 documents have already been used, but -- and I haven't  
19 prepared his deposition yet, but it could be that there's some  
20 document in the file that from a tactical point of view I  
21 don't want to provide. If it's something that's 30 or 40  
22 pages long then it might be silly for me not to provide it  
23 because of the amount of time it'll take him to review it.  
24 But if it's something that's one or two or three pages long it  
25 might be different. So you know, I'm accepting everything

1 that Your Honor is saying --

2 THE COURT: Okay.

3 MR. RUDIN: -- but I think --

4 THE COURT: I think that's fair.

5 MR. RUDIN: -- I'm entitled to a little latitude.

6 THE COURT: Yes. I'm not going to require you to do  
7 that extra step.

8 MR. RUDIN: Your Honor, I would like to take --

9 THE COURT: But he can also take a recess and take a  
10 look at the documents if he needs to.

11 MR. RUDIN: I would like to take the deposition --

12 THE COURT: You can talk to him.

13 MR. RUDIN: -- I'm sorry, before the end of July  
14 because it is possible that -- I mean it's more than possible,  
15 it's almost certain that that will affect what, if any,  
16 depositions I need to take afterwards and it may eliminate the  
17 need to take certain depositions.

18 THE COURT: Okay.

19 MR. RUDIN: And with the discovery deadline being  
20 August 27<sup>th</sup> --

21 THE COURT: All right. If you're going to do that -  
22 -

23 MR. LARKIN: Your Honor --

24 THE COURT: -- then --

25 MR. LARKIN: Your Honor, I'm sorry, that's not going



1 to work. That's just -- let me respectfully request that the  
2 Court not direct that because we have our discovery to do, we  
3 have Mr. Collins' deposition to take which is going to be very  
4 important. We have a number of non-party witnesses that we  
5 need to track down and get their depositions taken, Mr. Oliva,  
6 potentially Mr. Santos, Mr. Diaz who lives in Massachusetts.  
7 We also have ADA Vecchione's deposition which it looks like is  
8 going to be broken up into two parts.

9 THE COURT: It's a lot of work. I understand.

10 MR. LARKIN: To get all that done the right way by  
11 the end of July just does not seem quite fair. I mean --

12 THE COURT: I want to be here when you're doing his  
13 deposition in case there are some questions that come up, and  
14 I will tell you my schedule so this will help you a little  
15 bit.

16 MR. LARKIN: Yes, Your Honor.

17 THE COURT: I will not be here the week -- I have to  
18 be at a - I have to teach at a workshop on the week of the 29<sup>th</sup>  
19 and then I'll be gone the week -- this is July.

20 MR. LARKIN: Week of 7/29? I'm sorry.

21 THE COURT: Right. And I will not be here on the  
22 week of August 5<sup>th</sup>. I will be back August 12<sup>th</sup>. Oh no, I teach  
23 another workshop. Okay. Starting -- so I will be around from  
24 August 15<sup>th</sup> for the duration or in July before then. I mean  
25 obviously I'm available if you need me otherwise, but --

1 MR. RUDIN: Well then --

2 THE COURT: -- I have to conduct a new judge  
3 training for a couple of days one week and a few other things  
4 I have to do, so --

5 MR. RUDIN: Then Your Honor, I know Mr. Larkin is  
6 not going to like this, but I would propose July 26.

7 MR. LARKIN: It's just not going to work. Just is  
8 not going to work. I'm not in that day. That's a Friday.  
9 I'm not in that day. I've got longstanding plans for that  
10 entire weekend so --

11 THE COURT: How about any time the 22<sup>nd</sup> through the  
12 25<sup>th</sup>? Would that work?

13 MR. LARKIN: It's just not -- we have Jabbar  
14 Collins' deposition the 23<sup>rd</sup> and 24<sup>th</sup> that week.

15 THE COURT: Okay.

16 MR. LARKIN: And that's an important deposition for  
17 us.

18 MR. RUDIN: But that deposition --

19 MR. LARKIN: And we also --

20 THE COURT: Are you worried that this is going to  
21 not give you enough time to decide which other witnesses to  
22 depose at the end of the discovery period?

23 MR. RUDIN: Well, that's what I'm concerned about.

24 THE COURT: Yes. Well, I would certainly -- if that  
25 becomes a concern, I would certainly extend your time, you

1 know, just your time to conduct depositions additional.

2 MR. RUDIN: Well, if that's the case, then I guess  
3 we could do August 15<sup>th</sup> or 16<sup>th</sup> after you get back.

4 THE COURT: Okay.

5 MR. LARKIN: I'm going to need to confer to find out  
6 what specific dates are going to work. The district attorney  
7 obviously has a calendar and a very busy schedule, so I need  
8 to --

9 MR. RUDIN: So do I.

10 MR. LARKIN: -- get dates from him. We need to do  
11 that.

12 THE COURT: Do you want to just tentatively just  
13 pencil in the 15<sup>th</sup> and 16<sup>th</sup> of August?

14 MR. LARKIN: Well, it's going to be a one day  
15 deposition --

16 THE COURT: We don't know which date it'll be.

17 MR. LARKIN: -- it seems to me, and I just don't --  
18 I need to talk to him to find out what sort of -- what his  
19 vacation plans are, if any, and what -- you know, he's  
20 obviously very busy.

21 THE COURT: Obviously. But do you want to just --

22 MR. LARKIN: I just can't commit to a date.

23 THE COURT: -- get back to the Court? I mean just  
24 the two of you work it out and then just get back to me so  
25 that I make sure that I know when he's going to be deposed.

1 MR. LARKIN: Yes, Your Honor.

2 THE COURT: And I don't, you know, I don't schedule  
3 something that's going to be an all day affair like this.

4 MR. LARKIN: We will do that, Your Honor.

5 MR. RUDIN: Your Honor, that'll be a court ordered  
6 deposition date so that it won't be changed unless there's  
7 some compelling reason?

8 THE COURT: Unless there's good cause, right.  
9 That's how it works. But things do happen sometimes. All  
10 right. So we're looking at the 15<sup>th</sup> and the 16<sup>th</sup> and in case  
11 those days aren't good, the 19<sup>th</sup> or the 20<sup>th</sup>. You know, I mean  
12 we can go into the following week, any time that following  
13 week.

14 MR. LARKIN: Yeah, the 19<sup>th</sup> and the 20<sup>th</sup>, I'm out that  
15 week, the week of the 17<sup>th</sup>. Excuse me --

16 THE COURT: Are you here the 19<sup>th</sup>?

17 MR. LARKIN: I'm sorry, I'm out I believe the week  
18 of the 10<sup>th</sup>, the 17<sup>th</sup>. Those seven days. So the 15<sup>th</sup> and 16<sup>th</sup>  
19 are probably not going to work, Your Honor.

20 THE COURT: Okay. So the week of the 19<sup>th</sup>. We'll  
21 shoot for the week of the 19<sup>th</sup>. Okay. All right. So are we  
22 concluded? 5:20?

23 MR. RUDIN: Doesn't that make you sad?

24 THE COURT: Well, I've got eight people waiting for  
25 me in the jury room for dark court, so --

1 MR. RUDIN: Thank you very much, sir. Thank you.

2 THE COURT: All right.

3 MR. LARKIN: Thank you for your time, Your Honor.  
4 Thank you.

5 THE COURT: Thank you. All right. So should we  
6 schedule another conference just in case, just to make sure  
7 that -- just in case you might have any disputes?

8 MR. LARKIN: I think so. I think a July date would  
9 be good.

10 THE COURT: Okay. I can't imagine there could be  
11 any problem. Let's do it July 16<sup>th</sup>. Is that far enough along  
12 that it would be worthwhile?

13 MR. RUDIN: It almost seems too far.

14 THE COURT: All right. Do you want to go the week  
15 before?

16 MR. RUDIN: I'd prefer the week before, the 9<sup>th</sup>, 10<sup>th</sup>  
17 or 11<sup>th</sup> if you have it.

18 THE COURT: The 9<sup>th</sup>. Is the 9<sup>th</sup> too early?

19 MR. LARKIN: Your Honor, any day that week is okay  
20 except for the Friday, the 12<sup>th</sup>. I mean Monday the 15<sup>th</sup> is also  
21 good for us.

22 THE COURT: I'm selecting a jury that day in a  
23 criminal case.

24 MR. LARKIN: The 16<sup>th</sup> we have another deposition in  
25 this case actually.

1 THE COURT: Yes.

2 MR. LARKIN: The 17<sup>th</sup> is okay for us.

3 THE COURT: Let's do the week of the 8<sup>th</sup>. I'd rather  
4 do it sooner rather than later.

5 MR. LARKIN: 8<sup>th</sup> is okay, 9<sup>th</sup>, 10<sup>th</sup>.

6 THE COURT: 8<sup>th</sup> is okay? I've got cases all the way  
7 up to 5:30 on the 8<sup>th</sup>. So if I take it at the end of the day  
8 it might be shorter, so why don't we say the 9<sup>th</sup>. I think the  
9 9<sup>th</sup>. I can do the 9<sup>th</sup> at the end of the day or the 11<sup>th</sup> at the  
10 end of the day.

11 MR. LARKIN: Is that 4:30 or 5 or --

12 THE COURT: It's 5.

13 MR. RUDIN: Arthur, whatever is better for you.

14 MR. LARKIN: Either day works for us.

15 THE COURT: Okay. Let's say the 9<sup>th</sup>.

16 MR. LARKIN: The 9<sup>th</sup> at 5 p.m., Your Honor?

17 THE COURT: Yes.

18 MR. LARKIN: Is that by telephone?

19 THE COURT: I think it's a little better to get you  
20 here so you talk over each other.

21 MR. RUDIN: Or talk over each other a little less.

22 MR. LARKIN: I see Your Honor's incentive. The  
23 later the conference, the shorter it'll be.

24 THE COURT: Well, next time I'll actually give you a  
25 deadline. It's only going to last X amount of time and then

1 we're done. But I think this was really productive because I  
2 think we do have a schedule. And I want to just emphasize we  
3 do have the schedule and I know it's going to be hard to  
4 comply with, but we really need to. So unless there's good  
5 cause, this is the schedule.

6 MR. LARKIN: I understand, Your Honor.

7 THE COURT: Okay?

8 MR. RUDIN: Thank you.

9 MR. LARKIN: Thank you.

10 THE COURT: All right.

11 MR. LARKIN: Thank you for your time.

12 MR. RUDIN: Take care.

13 THE COURT: All right. And so I'm not going to  
14 write up all the thousands of rulings here. You'll just look  
15 at the transcript, okay?

16 MR. LARKIN: We'll get the transcript. Thank you,  
17 Your Honor.

18 [Proceedings ended at 5:19 p.m.]

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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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6 Mary Greco

7 Dated: June 20, 2013  
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